Who cares?

The rights of the child and the responsibility of State duty-bearers in the State uplift practice in Aotearoa New Zealand

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Abstract

In Aotearoa New Zealand, between 2013 and 2023, 3036 babies (under 12 months old) were taken into State care, with Māori babies being disproportionately represented. In May 2019, a Newshub journalist filmed the planned removal (uplift) of a newborn Māori baby from their kin by the State welfare agency Oranga Tamariki at Hastings Hospital, leading to public allegations of human rights abuse, and discrimination, resulting in five separate inquiries. The primary focus of this research is on the child-only uplift journey from birth kin into non-kin State care, as led by public servants, applying domestic and international human rights frameworks, including Te Tiriti o Waitangi (1840) and the United Nations Convention on the Rights of the Child (1989). The Universal Declaration of Human Rights (1948) and the Children's Convention guide the New Zealand Government (the State) to offer "special protection" to children, their mothers, parents and families. After an uplift, the State, as represented by Oranga Tamariki and its delegated carers, takes on the legal parenting role in place of the child's parents ('loco parentis'). Despite the State's responsibilities and resources, evidence shows that children in State care have unmet health, education, and well-being needs and face elevated risks of physical, sexual and psychological abuse. Findings informed by qualitative interviews with health, welfare, and justice practitioners, and public servants, indicate that current uplift and care practices rarely reflect Te Tiriti or human rights obligations and seldom serve the best interests of children, their kin, the public servants involved or society. Rooted in nineteenth-century, eugenics-informed child removal policies and practices, such as adoption, current State uplifts and State care practices perpetuate discrimination and abuse towards the individual, kin separation and abuse and intergenerational breaks and trauma, unlike strength-based, bioecological alternative care. This research offers suggestions for improved public sector policy and practice.

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List of Abbreviations

BoRA	Bill of Rights Act 1990
CoCA	Care of Children Act 2004
CYF	Child, Youth and Family – State child welfare agency till 2017
HRA	Human Rights Act 1993
ICM	Independent Children's Monitor
IFSW	International Federation of Social Workers
MAC	Ministerial Advisory Committee (on a Māori Perspective for the Department of Social Welfare) *Pūao-te-Āta-tū*
MoE	Ministry of Education
MoH	Ministry of Health
MoJ	Ministry of Justice
MSD	Ministry of Social Development
NCS	National Care Standards and Related Matters Regulations
NZLC	New Zealand Law Commission
OCC	Office of the Children's Commissioner, became Mana Mokopuna - Children and Young People's Commission in July 2023
ONZ	Ombudsman New Zealand
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OTA	Oranga Tamariki Act 1989
OTMAB	Oranga Tamariki Ministerial Advisory Board
RCASC	Royal Commission of Abuse in State and Faith-based Care
Te Tiriti	Te Tiriti o Waitangi 1840 – the Treaty of Waitangi 1840
UNCRC	United Nations Convention on the Rights of the Child, 1989
UNDHR	United Nations Declaration of Human Rights, 1948
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples, 2007
UNESCO	United Nations Education, Scientific and Cultural Organisation
UNDP	United Nations Development Programme
VOYCE	VOYCE Whakarongo Mai, Voice of the Young and Care Experienced
WT	Waitangi Tribunal
WHO	World Health Organisation
WO	Whānau Ora

Attestation of Authorship

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person (except where explicitly defined in the acknowledgements), nor used artificial intelligence tools or generative artificial intelligence tools (unless it is clearly stated, and referenced, along with the purpose of use), nor material which to a substantial extent has been submitted for the award of any other degree or diploma of a university or other institution of higher learning.

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his life trying to make New Zealand law and society more humane for children, young people and adopted people and their kin. Robert is the only interview participant named in this research.

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> Ka kitea i te ratonga te ihi o tō mātou mana mēhemea ka pūta te pono ki te whakapono te tika i te wehi tētahi mō tētahi.
> The driving force behind our mana will become apparent in the service we give when honesty develops into trust and integrity and fairness develop into respect for one another.

Ethics Approval

Approval for the research reported in this thesis was granted by Auckland University of Technology Ethics Committee (reference number 19/257) on 12 September 2019 (see Appendix A).

Chapter 1: Research Overview

This chapter provides an overview introducing the practice of 'uplift' of newborn babies and young children by the State in Aotearoa New Zealand, the societal context of State care in Aotearoa New Zealand, and the rationale for the present research. Concepts and terminology relevant to the thesis topic are also explained.

1.1 The State 'uplift' practice in modern Aotearoa New Zealand

The term 'uplift' became commonly used after an attempted State uplift in May 2019 of a Māori baby in Hastings (Hawkes Bay, New Zealand). This case involved the forced removal of a newborn baby from its mother and whānau by the State agency responsible for child welfare, Oranga Tamariki. The second newborn child removed from the same mother (Reid, 2019). This attempted uplift, opposed by the baby's whānau (family), their iwi (tribe) Ngāti Kahungungu, and the mother's midwife, became known as the 'Hastings case.' A subsequent *Newsroom* media documentary, *New Zealand's Own Taken Generation*, made by journalist Melanie Reid (Reid, 2019), was aired nationwide, drawing public outrage, with commentaries about the uplift practice being cruel, a human rights abuse, racist, and discriminatory (Equal Justice Project, 2019; Kieboom, 2019; Ngata, 2019; Quince, 2019). These events triggered a major debate and review of the uplift practice, including several official inquiries.

Four government and non-government agency inquiries and the additional Oranga Tamariki internal practice report examined the Hastings case from diverse perspectives (Office of the Children's Commissioner [OCC], 2020c; Ombudsman New Zealand [ONZ [Boshier], 2020; Oranga Tamariki [OT], 2019; Whānau Ora [WO], 2020; Waitangi Tribunal [WT], 2021). Although these inquiries all related to an examination of the Hastings case, evidence was included on the often-intergenerational experiences of Māori mothers and whānau of the State uplift intervention and State care. The timing of these reports is significant because it was the first time that State agencies coordinated their approach to criticise and provide solutions to a State intervention. As a result of

the intervention of brave people, the mother was able to keep her son and her older daughter returned to her care, five years later (Sumner, 2025).

1.1.1 The formal State uplift process in Aotearoa New Zealand

For parents and families needing help to parent and / or to deal with personal issues, the State may intervene to uplift their child, thereby legally taking on the role or place of the parents in 'loco parentis.' Separating children from kin can have negative outcomes for children, parents, and their family or whānau in the short and long term (Bruskas, 2008; Friesen et al., 2017; Howard et al., 2011; Rapson & Rolston, 2019; WT, 2021).

In Aotearoa New Zealand, the child's birth mother is automatically a legal guardian of the child at birth. In 2005, amendments to the Care of Children Act 2004 (COCA), meant that the father is automatically a guardian if named on the birth certificate, or married to, or in a civil union with the mother. If the parents do not live together at the time of the birth and the father's name is not on the birth certificate, the father needs to apply to the Family Court to be appointed as a guardian of the child, which the Court will grant unless it is judged to be against the welfare and best interests of the child (COCA, 2004, s. 17).

When a baby is removed from its kin, the State, the role of the Chief Executive of Oranga Tamariki (and its predecessors Child, Youth and Family, Social Welfare, and the Ministry of Education when they had full child welfare responsibilities) act in' loco parentis.' The Chief Executive of Oranga Tamariki, supported by various agencies, has full legal custody of the children, like the Department of Corrections Chief Executive's legal responsibility for prisoners. The Oranga Tamariki Act 1989 grants the Chief Executive of Oranga Tamariki the overall legal parenting responsibility, which can be delegated to Oranga Tamariki social workers and approved caregivers, including non-kin foster parents.

Uplifting a child from kin to a 'non-kin' foster home is commonly the action taken, particularly when Oranga Tamariki social workers have sought an urgent 'without notice' Court order, which means that kin and whānau do not know about the uplift until it happens. Social work

practice holds a standard that the removal of children from kin should always be a last resort by social workers (Carr, 2016; CYF, 2010; Davis, 2021; Duff, 2018; OTMAB, 2021).

The uplift starts the baby, or child, on a lifelong journey referred to in longitudinal studies as a 'life-course.' Former Chief Science Advisor to the Prime Minister, Professor Peter Gluckman, argued the case for using evidence to inform children's social policy based on human rights and a life-course approach (Gluckman, 2017). Many health professionals argue for a life-course approach within and across multi-generations to alter health disparities (Jones et al., 2019; Growing up in New Zealand Study, 2024-2024). Central to the present study is the concept of human rights for the baby and kin and the role of public servants as duty-bearers within the UNCRC (1989) framework, as explored further in Chapter 4.

1.2 The recent context of State uplift practice in Aotearoa New Zealand

Through the Oranga Tamariki Act 1989, the Chief Executive has a social contract with, and clear responsibility for, the children in State care wherever they are placed (Cooke, 2013). Acting in this capacity, the State gives a commitment to the biological parents, their family, and to the wider community, to do a safer parenting job than the biological parents and kin in their current situations. The reality is that while the State acts in loco parentis, many children are still growing up in State care without adequate protection and safety (Ashton, 2014; Atwool, 2012, 2021; OCC, 2020; RCAC, 2021). In 2017 Oranga Tamariki recognised that their agency had placed some children with unsuitable foster families, or children had had multiple placements, as there was a shortage of foster parents (Donovan, 2017).

From 2013 to 2017, on average, 591 babies under 12 months old were in State care each year (MSD, 2017). Between April 2015 and April 2018, the State uplifted 574 babies from their kin within the first month of their life. For 45 babies, the separation occurred on the day their mothers had given birth to them (OT, 2018). However, in 2018, the State child protection agency, Oranga Tamariki, established in 2017, uplifted 281 babies immediately after birth – a significant 33%

increase from the 211 newborns uplifted in 2015 by the previous State child protection agency (OT, 2019).

Between 2020 and 2021, three State agencies – the Office of the Children's Commissioner (OCC), the Ombudsman (ONZ), the Waitangi Tribunal (WT), and one non-government agency – Whānau Ora (WO), examined the Hastings case, identifying that this State uplift practice disproportionately affected Māori babies, children and their whānau, hapū and iwi (OCC, 2020a, 2020b, 2020c; ONZ [Boshier], 2020; WT, 2021; WO, 2020). Between July 2008 and June 2018, Oranga Tamariki uplifted 4,300 babies under 12 months of age, with 62% identified as Māori despite only 17% of the New Zealand population then identifying as Māori (OT, 2019, cited in *RNZ*, 2019, para 5).

A Children's Commissioner report (OCC, 2020a) found that in 2019, newborn Māori babies were five times more likely to be uplifted into State care than non-Māori babies. The Ombudsman's *He Take Kōhukihuki | A Matter of Urgency* report (2020) identified that these uplifts were "an extraordinary use of the government's power," with most uplifts occurring "without expert advice or independent scrutiny" (ONZ [Boshier] 2020, p. 10).

Based on New Zealand State child welfare records, only 10% of all babies aged 0-3 months at the time of the State uplift return to live permanently with their parents, family or whānau (OCC, 2020a). Most children in State care do not leave that care until they are legally adults (Keddell, 2019). Evidence from 2,932 participant interviews, experts and survivor witnesses in the Royal Commission of Inquiry into Abuse in State and Faith-Based Care (RCAC) between 2018 and 2023, and other Independent Children's Monitor (ICM) research (ICM, 2022, 2023), concluded that Oranga Tamariki, and previous State child protection agencies, had not provided effectively for the emotional, physical, educational and health development needs of most children in its care. For example, in 2022, 53% of children in State care were not enrolled with a general practitioner or a medical centre (ICM, 2023).

There is considerable evidence that from the 1950s onwards many children in State care, of which Māori children were disproportionately represented, were emotionally, physically or sexually

abused by their non-kin carers (MartinJenkins, 2020; OT, 2019, 2020; RCAC, 2018-2024; Rouland et al., 2019; Savage et al., 2021; WT, 2021). From 2018 to 2023, the effects of growing up in State care formed part of a national inquiry - the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (RCAC, 2018-2024).

On 25 June 2024, the Royal Commission delivered its final report and recommendations to the Governor-General, Her Excellency the Right Honourable Dame Cindy Kiro, in a report entitled Whanaketia – through pain and trauma from darkness to light (RCAC, 2024). The report was tabled in Parliament on 24 July 2024 and is publicly available. In a media release, Prime Minister Chris Luxon thanked the 2,400 survivors for their "bravery" and "honesty" in sharing their stories with the Royal Commission, saying, "This is a dark and sorrowful day in New Zealand's history. As a society and as the State we should have done better" (Luxon & Stanford, 2024, para 3-6). A formal apology occurred on 12 November 2024. (Luxon, 2024). This inquiry examined State and faith-based care from 1950 to 1999, as well as the current situation for children in State care and the redress processes informed by survivor experiences. By the end of May 2025, government progress on implementing the report's suggested recommendations was slow with the acceptance of only 19 of the report's 207 recommendations (Crown Response to the Abuse in Care Inquiry, 2025, June 5). Prompt action is considered crucial to survivors and their families, current children living in State care, and the future of how children enter and live in State care (RCAC, 2024).

Separating family members through uplift and closed adoption practices has impacted generations of Aotearoa New Zealand's population, particularly Māori individuals, whānau, hapū, and iwi (Ahuriri-Driscoll & Blake et al., 2023; Griffiths, 1997; Haenga-Collins, 2017; MAC, 1986; Newman, 2013; West 2024). Until the Hastings case (2019), there was little documentation about State uplifts and child placement with non-kin carers in Aotearoa New Zealand (Reid, 2019; Smith et al., 1999; Worrall, 2001, 2005, 2016). The exceptions included information on the State practice of adoption (Ahuriri-Driscoll & Blake et al., 2023; Blake, 2013; Else, 1991; Else & Haenga-Collins, 2023; Griffiths, 1997; Haenga-Collins, 2017; 2019; Iwanek, 1987,1997; Newman, 2013, 2020a; 2020b;

Shawyer, 1979; West, 2012, 2024), youth justice institutions (MAC, 1986; Quince, 2007; Stanley, 2016; Sutherland, 2019), and youth in mental health institutions (Every-Palmer & Sutherland, 2023; Sutherland, 2019). However, much of the Government's official data on these individuals and their cohorts in State care has historically been inadequate, making any research exceedingly difficult (Cook, 2020; Else, 1991; RCAC, 2024; Stanley, 2016; Stanley et al., 2024; Sutherland, 2020).

1.3 Research rationale and focus

1.3.1 Research focus

This research analyses the State practice of the child-only journey when a child is uplifted from kin to live in State care with non-kin foster parents in Aotearoa New Zealand, by applying a human rights framework within the context of Te Tiriti o Waitangi 1840. It explores the State uplift through the perspectives of people with experience working in and studying the public service.

An initial literature search revealed that little information existed about the State's child uplift practice, including in the Aotearoa New Zealand context. However, this gap in the literature changed in May 2019, following the Hastings case.

1.3.2 Positionality

I am a Pākehā (New Zealander of European descent) researcher from a large multicultural family that includes people of Indian origin (though born in Kenya), Irish, Scottish, Māori (Tainui and Ngāti Whātua), Samoan and white Australian. I am a third-generation Tangata Tiriti on my mother Margaret's side and first-generation on my father John's (Séan Ó Cuill) side.

Although Mum was selected by a Māori Ministry of Education team as the first Pākehā itinerant te reo Māori teacher in Aotearoa New Zealand, she considered herself a te ao Māori novice, generously mentored and supported by Māori after beginning her journey at Wellington Teachers College in the 1950s. As a Pākehā, she believed the best way she could support Māori was by educating other Pākehā, especially primary school teachers, who were often ignorant of settler history (local and national) and the subsequent disadvantages and racism Māori experienced

through colonisation. Mum taught me what 'white privilege' looked like in colonised Aotearoa. Irish Dad had great insights into the legacy of British colonisation and saw similarities with the New Zealand colonisation. Likewise, this research is intended to offer some examples of Māori values and expertise, which our child and protection agency, and indeed all public servants, could incorporate and / or learn from. I am not speaking for Māori or offering any advice to Māori. Rather, I am seeking to explore and highlight some useful ways of thinking which align with a Māori worldview, as most children in State care are Māori. My research, based in human rights, is about a Pākehā public service uplift practice that was originally developed by Pākehā public servants. Initially, the practice affected mainly Pākehā mothers and children but has evolved to disproportionately affect Māori and is still conducted by mainly Pākehā public servants.

During the interview process I did not ask about the participants' ethnicity however, two participants strongly identified as Māori in their responses. Others may have Māori ancestry which we did not discuss. While I sought to interview more Māori public servants, this was not possible for a few reasons, not least the increased workload and demand made on Māori public servants working within the field after the Hastings case. However, I made sure their commentary, when given publicly, was included in my literature search. Interestingly, the issue of this added burden on Māori public servants was raised by participants in Chapter 6.

As Tangata Tiriti, I support tino rangatiratanga (Māori sovereignty and self-determination) particularly as it applies in my research area, the public service. For this reason, in Chapter 4, I introduce six Māori models (Māori ecosystems) designed 'for Māori, by Māori and with Māori' within the health sector as examples of protective kinship.

1.3.3 Genesis for this thesis

The genesis for this thesis lies in my childhood in the 1970s and 1980s in Aotearoa New Zealand. I grew up in my family knowing single mothers, the children of single mothers, adopted people, and adoptive and blended families. My parents undertook their parenting in partnership, and Dad, an Irish immigrant, did not shirk from changing nappies, cooking meals or pushing a pram,

unlike many of his peers in this country and elsewhere including Ireland, who viewed those tasks as 'women's work.' From when I was young, my mother encouraged and supported single mothers to keep their babies, and to reach out to family members or friends who had offered them support when their parents had not. She did so because she believed it was important for every child to grow up knowing their kin, and that being a single mother did not make a person an incompetent parent.

From that period on, I was interested in the situation of mothers who parented children without the involvement of the child's father. In my first university history paper, I interviewed a mother who parented alone because of a marriage breakdown in the 1930s and her daughter who had a comparable situation in the 1950s. In 1991 and 1992, I was privileged to be part of Gaylene Preston's and Judith Fyfe's *War Stories Our Mothers Never Told Us (*Fyfe & Preston, 1995) oral history documentary team. In lengthy individual oral history interviews with women aged from 70 to 90 years old, issues of premarital sex, unplanned pregnancies, female shame and discrimination, adoption, and single motherhood were discussed in the context of the Second World War.

In 2018, I started seriously thinking about why the State removal of child from kin occurs. This led to meeting Mary Iwanek – an experienced social worker, former nurse and Child, Youth and Family adoption manager who had worked in the child protection, adoption practice and research area for over 50 years. Mary provided invaluable insights into how State care and protection systems worked over that period, including adoption. I gained access to her documents and books, many of which were out of print and not available through libraries. I was lucky to do a whole of life oral history with Mary conducted over several weeks. I attended the International Conference on Adoption Research (ICAR 6) in Montreal in July 2018 with Mary and Dr Maria Haenga-Collins, to participate in the international discussion on the current research and thinking around adoption, kin and non-kin fostering, and forced removal of Indigenous children by State authorities. This experience enabled me to reflect on how Aotearoa New Zealand's child uplift policy and practice fits into the historical and international Western world context. I explored research and documented

theory for how the mother-baby separation is viewed from the lens of child development, family studies and neuroscience, and over time in longitudinal studies.

Valandra (2012) outlined a set of reflective questions about personal assumptions and biases in research which prompted me to consider my existing knowledge about the research topic, its sources, and how my personal experiences, assumptions and biases may have influenced my understanding and views. With this in mind, I present the context and rationale for this research, followed by a detailed analysis of the historical impact of State removal of children from families in Aotearoa New Zealand.

The history of closed and forced adoptions and children in State care is relevant to the current State uplift practice of removing babies from their mothers and families and placing them with non-kin. Since the 1970s, over 50% of the children in State care in New Zealand were Māori (Ihi Research, 2021), whereas the total Māori population in 2021 is just over 17% (Statistics NZ, 2021). *Te Puao-te-Ata-tu* (1986) report on child protection services found that the impact of Māori children growing up in State care resulted in an intergenerational breakdown in whānau Māori and society. This intergenerational State intervention focusing on Māori continues today (OCC, 2020). The research *Hāhā-uri, Hāhā-tea: Māori involvement in State Care 1950-1999* (Ihi Research, 2021) highlighted that Māori children were "lost to their wider communities, often returning as damaged and traumatised adults alienated from their culture" (p. 13).

In Aotearoa New Zealand, adoption and fostering are currently two separate legal and conceptual paths. 'Open' adoption is the main form of adoption (Iwanek, 2018), although legal adoptions generally are becoming less common, with only 125 adoptions occurring in 2020 (MoJ, 2021). Early research on Home for Life, now regarded as permanent fostering (MSD, 2012), illustrated the pressure from some local foster parents on the State care agency to combine the adoption and fostering paths so they could adopt children from State care, as is the practice in the United Kingdom (Palmer et al., 2023). In the New Zealand research, many non-kin caregivers were found to be people seeking to adopt who did not want contact with the child's kin (MSD, 2012). The

same research identified that some social workers who were desperate to find foster carers misled many caregivers with the idea that the child's placement might lead to adoption.

After attending, and presenting at ICAR6, 2018 and informed by a fuller spectrum of views on adoption, I was able to narrow the scope of my research. This trip enabled me to hear about the impressive research and lived experiences of academics who had themselves been adopted.

The State adoption practice has similarities with the current State practice of placing children with non-kin foster carers, as both practices are influenced by ideas of nature versus nurture (Reece, 2019; Schulman, 2016). With the legal transference of parental care through adoption, there is no State follow-up to ensure adopted children living with non-kin have regular kin contact and access to their birth identity and culture. There is also little follow-up on how children are faring in State care or on keeping up whānau connections while living with non-kin (ICM, 2022, 2023, 2034).

From closed adoptions to a child's entry into State care, examples of deficit thinking about parenting are apparent in Aotearoa New Zealand's modern child protection system. With the State uplift practice, birth mothers, parents and broader kin are deemed by the State inadequate to parent, and the State takes on this parenting role, supported by legislation.

In 2016, the creation of a new national child welfare agency named the Ministry for Vulnerable Children led to the Children's Commissioner, iwi leaders and the public criticising the new name for using the deficit term *vulnerable* to reflect the agency's child protection role (Becroft, 2016; Kenny, 2017). In 2018, after rebranding the agency to Oranga Tamariki, further public criticism was levelled against the agency for advertising and identifying a Māori child, including age, gender, small town location and iwi, needing foster care parents on the *Trade Me* goods for sale website, forcing the agency to apologise (*RNZ*, 2018a, 2018b). The child's iwi asked why Oranga Tamariki had not contacted them to accommodate the child, in the first instance (*RNZ*, 2018c).

At the ICAR6 conference, I learnt that advertising children for fostering and adoption on social media sites is a commonly accepted practice in the United Kingdom and the United States. In

Aotearoa New Zealand, with its small population and the likelihood of a child being easily identifiable, use of social media for advertising children in need of foster placements is considered a breach of privacy, highly inappropriate, and harmful to the individual child and their whānau (*RNZ*, 2018a, 2018b, 2018c). However, Newman (2020) identified that advertising both an individual child for adoption and a couple's wish to adopt was common in New Zealand newspapers until the *Adoption Act 1955*. This nineteenth-century thinking, still evident, made me want to explore further the State's role and the public servants who carry out the practice of separating a child from its kin through an uplift where the State becomes the child's legal parent.

1.4 Research questions

Cresswell (2014) suggests that researchers focus on a single overarching question, with sub-questions. Following this approach, the overarching question for this research is: From the public servant's perspective as a duty bearer, how does the child-only journey, from hospital to stranger care, operate 'in the best interests of a child' as per the *United Nations Convention on the Rights of the Child, 1989 (UNCRC)*?

To explore this question, insights from public sector policy and practice professionals were gathered, using the following sub-questions as a basis for the inquiry:

a. What are participating agency workers' experiences of dealing with mothers and children who are, or who have been, separated from birth and experienced State care through agencies' policy or practice work?
b. In the event of the uplift experience being difficult or harmful, how could this public service uplift practice be more appropriate to the needs of the mother, baby, and whānau in this situation?
c. What are the barriers that prevent agency staff from operating in holistic ways to make a difference for the mother, baby, whānau, and their agency involved in uplift practice?

Each of these sub-questions was intended to generate in-depth discussion about the State uplift practice.

1.5 Purpose and usefulness of the study

This research examines the child's rights in the uplift process in Aotearoa New Zealand, and the role of public servants as duty-bearers for the child who has been removed from family and whānau. This research sought to make the following contributions:

- To contribute to thinking about the role of public servants as human rights duty-bearers and the uplift practice as a public service.
- To identify what rights and protections a child, their mother and whānau have under the UNCRC 1989, which Aotearoa New Zealand ratified in 1993.
- To examine the origins of attitudes and behaviours that have formed and continue in Aotearoa New Zealand society which enable uplifts to occur in the 21st century.
- To build on other research inquiries on the Hastings case by focusing on the role and obligations of the public servant.
- To identify new ways for public servants to engage with children and their whānau in situations where traditionally there would have been an uplift.

It was anticipated that the research findings would be helpful to both policymakers and practitioners who are seeking to progress the legislation and policy to practice inclusion of UNCRC and identify ways State and non-government systems can work together in the best interest of the child.

1.6 The voice of the child in this research

Children were not interviewed in this research as the focus is on the perspectives of the duty-bearers – the people who act for the State, and who work in loco parentis for the child removed from kin by the State, for example social workers, or in a more general sense those who work for the State as public servants.

The phrase 'the best interests of a child' comes from Article 3 of the UNCRC, 1989 (UNCRC, 1989, art. 3*).* This Article gives the State duty-bearers the role and responsibility to work in the

child's best interests. However, the Article implies that these people and organisations know how to put this Article into practice effectively.

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the child's best interests shall be a primary consideration. (UNCRC, 1989, art. 3)

Children have often "been marginalised" in research, with adults describing the children's experiences or "framing children within a discourse of vulnerability and seeing research with (or on) children as inherently risky" (Carter, 2009, p. 858).

The child's voice in State care was incorporated in my research process by accessing secondary research conducted with young people and adults reflecting on their experiences in State care. VOYCE - Whakarongo Mai, which stands for Voice of the Young and Care Experienced – 'Listen to me,' is a non-government organisation set up to represent the need for children and young people in care to be heard and their voices kept at the centre of all decisions made about them by Oranga Tamariki (VOYCE, 2021). Since 2020, VOYCE has played an active part in supporting survivors of State care in the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (Parliamentary Counsel Office, 2023/141). In 2022, VOYCE was very vocal about Oranga Tamariki's mishandling of five-year-old Malachi Subecz's care while his mother was in prison, which contributed to his death. Oranga Tamariki ignored whānau requests about the child's abuse by his non-kin caregiver and requests to reunite him with kin. The inquiry report said Malachi was "invisible" in the system (Poutasi, 2022, p. 49). In 2022, VOYCE was also critical of Oranga Tamariki's pro-active media campaign *Hear Me See Me*, saying the use of identifying young people living in State care to tell their traumatic stories was exploitative (Pennington, 2022b).

In 2024, VOYCE also made a public submission on the proposed Oranga Tamariki Act section 7AA changes which remove the 2019 requirements, introduced after the Hastings case, to place Māori children with whānau, saying "the examples cited as reasons for repealing this legislation are

down to poor practice, poor training, guidance and support rather than poor legislation…This would be a huge step backwards for our tamariki." (VOYCE, 2024, paras 5 & 16)

Data from the Independent Children's Monitor review of Oranga Tamariki 2020 to 2021 indicates that not all tamariki and rangatahi in care know their rights and can feel 'powerless'.

> Tamariki make very few complaints. The data available does not tell us if this is because they are satisfied or because they do not know about, or are comfortable with, the complaints process. Our conversations with tamariki and rangatahi in care reveal, overall, they feel powerless to change their circumstances. Most we spoke with said they often do not know about changes planned for them, including placement changes, or the reason for these changes. (ICM, 2022, p. 11)

Under the Children's Commissioner Act 2003, the Children's Commissioner monitors the services provided by Oranga Tamariki each year, and this process includes feedback from children and young people about their experiences in the system (OCC, 2018). In the *State of Care* interviews, children and young people in care stated that they wanted to belong, be listened to, and have support from social workers (OCC, 2016, 2017, 2019). Cashmore (2001) describes a common theme, across studies from Britain, North America, Australia and New Zealand, that most children in State care think they have insufficient opportunity to be involved in important decisions, such as where they live and when and how often they see their parents. In a New Zealand study (2018) at least a quarter of the children in State care did not understand why they were in care, and social workers did not always meet children's right to information about their situation (OCC, 2018).

One example of putting the child's voice at the centre of policy decisions was the legislation change in 2017, which raised the age of support for young people in State care from 17 to 21 years (Yates, 2001). Despite years of lobbying, it was not until 2017 that the New Zealand Parliament raised the age to 21 years, realising that young people growing up in State care needed more transition support to cope with living independently (Atwool, 2010, 2016; Cleaver, 2016; OCC, 2015). Following the legislation change, Oranga Tamariki conducted research [user experience designed

service] on transition care with young people so that they could help design the services they need (OT, 2018).

Anthropologist Hardman (1973) described children as a "muted group" in society (Hardman, 1973, p. 85). Being muted and invisible contrasts with how Māori viewed children "as belonging to whānau and beyond that to the hapū and iwi" (Durie-Hall & Metge, cited in NZLC, 2004, p. 11).

1.7 The voice of whānau in this research

This research focuses on the role of public servants as duty-bearers, so interviews were not conducted with mothers or with whānau. Supporters of kin and advocates of kin seeking child reunification participated in this research. Following the Hastings case, several inquiries interviewed mothers, partners and whānau, and that data is incorporated into this thesis. An Office for the Children Commissioner's report found that Māori mothers who had a child or children removed from them said Oranga Tamariki often abandoned them (OCC, 2020b). The human rights framework, identified in Chapter 4, expects the State to recognise, protect and support a mother and child's dyadic relationship, and the relationship between a child and its family, whānau, culture and community networks.

1.8 Victim and victimology

This research tries to adhere to the diverse terminology of victims of crime and to survivors of State care and State abuse, which are also reflected in the Ministry of Justice's report *Victims' Trust and Confidence in the Criminal Justice System* (MoJ, 2021).

> We acknowledge that some people who have been harmed by crime do not like being referred to as a "victim." While some feel the term accurately describes their experience, some prefer to be referred to as "survivors," and some wish for no label at all. (MoJ, 2021, p. 9)

However, I use the term victims in quotes from other sources. I also note, and appreciate, Stanley's comments in the significant work *Road to State Hell, State Violence against Children in Post-war New Zealand* (2016), which uses the term victims for State-care children "to illustrate the

State-led violence and harms against them and to indicate that these experiences still require an appropriate State response" (Stanley, 2016, p. 4). 'Official strategies' have been used in Aotearoa New Zealand, Stanley identified, "to deny the nature, extent, and impact of institutional victimisation have silenced victims' voices" (Stanley, 2016, p. 188). Stanley's research contributed to the Royal Commission of Abuse in State and Faith-based Care (RCAC, 2018-2024). It will be interesting to see what kind of appropriate State response to the people who were harmed in care as children results from this Commission's recommendations made public in July 2024. Researchers Pihama, Cameron and Te Nana (2019) highlighted that for Māori, this healing process needs a kaupapa Māori approach.

> Healing must take place on both individual and collective levels to prevent intergenerational transmission of trauma. Māori healing must be based on the restoration of the Māori cultural and healing paradigms that colonisation sought to destroy. (Pihama et al., 2019, p. 1)

1.9 Key concepts and terminology

Explanations follow for key terms employed or coined explicitly for the present research. Appendix D has some additional key terms and background for people unfamiliar with Aotearoa New Zealand and the public service.

The term '*Aotearoa New Zealand',* used throughout this thesis, acknowledges the treaty partnership between Indigenous Māori and the British Crown (now includes the New Zealand Government or 'the State'). This partnership is rooted in the pre-colonial signing of *Te Tiriti o Waitangi* (*The Treaty of Waitangi*) in 1840 and the earlier *He Whakaputanga o te Rangatiratanga o Nu Tireni 1835* (*Declaration of the Independence of New Zealand 1835*). Notably, Kuramārōtini, the wife of Kupe and a member of his expedition team from Hawaiki is credited with naming 'Aotearoa' (long white cloud) after her first sighting of the North Island (Royal, 2005; Sinclair, 1959) approximately 30 generations ago (Anaru, 2011; Anderson, 1984; Harris & Binney, 2015; Irwin & Walrond, 2006, 2016). In 2024, Aotearoa is a widely accepted and used name for New Zealand. However, New Zealander of the Year 2022, Ngāi Tahu (also known as Kāi Tahu) leader Sir Tipene

O'Regan (2022) stated that Aotearoa refers to the North Island, thus excluding Te Wai Pounamu (the South Island -where Kāi Tahu are the largest iwi [tribe] and recognised as the home people), though he also acknowledged that the name Aotearoa New Zealand is a significant advance (O'Regan, 2022). Therefore, this is the term I employ in this research unless I am referring to official names.

'Kinship care' predates child welfare practices (Delap & Mann, 2019; Keane, 2011; Leinaweaver, 2014; Read, 1981, 2000: Worrell, 2006). Aboriginal and Torres Strait Islanders, Māori and other Indigenous peoples have traditionally had their own ways of providing intergenerational, collective care (Lohoar et al., 2014; Metge, 1995; Walker, 2017).

Māori have always had their own whānau and hapū structure to look after children within the wider family. 'alternative kinship care system,' which did not involve removal or separation of children from kin. Whāngai care varies from the British concepts of fostering and adoption. Māori children could be brought up by relatives who were not their parents, and there was no secrecy in those arrangements, with the children growing up knowing and often engaging regularly with their birth parents as part of extended family or whānau. (Metge, 1995; Keane, 2011/2017).

The term 'State uplift' (henceforth, 'uplift') refers to the forced removal by State agents of a child from their parent/s, family or whānau. The State uplift intervention is a common child protection response to allegations of child harm by 'Oranga Tamariki' – Aotearoa New Zealand's agency responsible for children's welfare. Removal by a State agency of a baby or child from its family is, in principle, an action of last resort when a serious risk to the welfare of the child is identified if the child remains with its parent/s. In principle, the child would be returned to its family or kin as soon as doing so would be without significant risk to the child's well-being.

Oranga Tamariki – In te reo Māori (the Māori language), 'Oranga Tamariki' translates into English as the 'well-being of children' (OT, 2022), while also referring to the agency with responsibility for the well-being of children since 2017. The agency name is used in in full throughout this thesis, as to shorten the name would mean to lessen the significance of its meaning to the State uplift practice that the agency conducts. Publicity about the disproportionate number of Māori

babies and children removed from whānau by Oranga Tamariki has led Māori individuals and agencies to say that this practice does not reflect the actual concept of 'oranga tamariki' and that this Māori term and associated tikanga (Māori values and practices) should not be used to support the current practice (Equal Justice Project, 2019; Kieboom, 2019; Nielson, 2019; Ngata, 2019; Quince, 2019; Tuialii, 2020; WO, 2020). This view is reflected in five of the reports identified in Chapter 5 (Office of the Children's Commissioner [OCC], 2020c; Ombudsman New Zealand [ONZ [Boshier], 2020; Oranga Tamariki [OT], 2019; Whānau Ora [WO], 2020; Waitangi Tribunal [WT], 2021).

The Oranga Tamariki system covers all agencies providing services to children and young people under the Oranga Tamariki Act 1989. The *Act* includes health, education, justice and disability services and services provided under contract by non-government organisations such as Barnardos, Open Home Foundation and Dingwall Trust, which together provide most of the non-kin foster care (ICM, 2022,2023, 2024a).

On 1 April 2017, when the State child protection agency was created, replacing the Child, Youth and Family agency, it was called the *Ministry for Vulnerable Children*. Immediate public criticism about the Victorian-era, deficit-sounding name resulted in the agency adopting the Māori name; Oranga Tamariki. Following a change of government, name changes occurred for both the Act that founded the agency, and the Minister's title, to the Minister for Children*,* instead of the previous title of *Minister for Vulnerable Children.*

State care – The concepts of the State and State care regarding a child entering and living in State care in New Zealand reflect Cooke's (2013) definitions, as follows:

- The State, represented by the Chief Executive of Oranga Tamariki, a delegated person, or a delegated organisation under the Oranga Tamariki Act 1989, gains a legal status over a child, replacing the child's legal (usually biological) parents or guardians. This status change happens in care and protection cases or when a child or a young person commits a crime under the Criminal Procedures Act 2011.

- The physical placement of a child in alternative or out of home care temporarily (temporary foster care) if returning home, or a permanent placement in a new family (guardianship).
- How a child is cared for when placed into care, when parenting of that child is done by the State, through its foster carers, residential homes, and other placements (Cooke, 2013).

From the survivor testimonies given to the Royal Commission of Inquiry into Abuse in State and Faith-based Care (RCASC, 2018-2024), it is noted that many survivors regard the term 'State care' as a false term or an oxymoron as from their experiences there was a lack of care by the State. In Appendix E, the State care timeline 1919 -2024, taken from the Crown Response to the Abuse in Care Inquiry website (2025) lists major institutional and legislative changes and reports across the welfare, justice, education and health sectors in Aotearoa New Zealand as a background.

Non-kin foster care has historically been the main form of State care for children and young people In Aotearoa New Zealand (Worrall, 2006). The terms 'foster parent,' 'caregiver' and 'non-kin care' are used in this research interchangeably to describe the non-kin people looking after children in an arrangement organised by the State. This care can be short-term, by emergency, or permanent (OT, 2022).

Through the Oranga Tamariki Act 1989, the Chief Executive has a social contract with and clear responsibility for the children in State care, wherever they are placed (Cooke, 2013). Acting in this capacity, the State gives a commitment to the biological parents and their family, and the wider community, to do a safer parenting job than the biological parents and kin in their current situations. The reality is that while the State acts in loco parentis, many children are still growing up in State care without adequate protection and safety (ONZ [Boshier], 2024; Connolly et al., 2013; Henwood, 2015; ICM, 2024a; OCC, 2020; RCAC, 2021).

Whānau – In te reo Māori, the term 'whānau' reflects a family grouping that is more multidimensional and larger in members than the English words family or nuclear family. A whānau connects to a larger hapū (subtribe) and an iwi (tribe) made up of several hapū and many whānau (Taonui, 2005). As an extended collective, whānau, hapū and iwi include bonds based on shared

physical, emotional and spiritual dimensions, whakapapa (genealogy) and ancestors (Walker, 2006). Whānau practices support generosity, cooperation, and reciprocity (Jahnke & Taiapa, 2003; Walker et al., 2006). In the public service, the term whānau is often used to describe all families (nuclear and extended) living in Aotearoa, New Zealand, this thesis, both terms are sometimes used together or interchangeably. It is apparent from the context if the sentence only relates to whānau Māori.

In loco parentis – When a baby is removed from its kin in Aotearoa New Zealand, the State, in the role of the Chief Executive of Oranga Tamariki (and its predecessors Child, Youth and Family, Social Welfare, and the Ministry of Education when it had full child welfare responsibilities) acts in loco parentis (Latin for 'in the place of a parent'; Oxford Dictionary, 2023).

Foster parenting in Aotearoa New Zealand – Approved foster parents may contract directly to Oranga Tamariki or work through one of three main charities – Barnardos, Dingwall Trust, or the Open Home Foundation, all contracted to Oranga Tamariki (ICM, 2022, 2023, 2024a).

Child-only journey – I coined the term 'child-only journey' to describe a baby leaving the hospital without their biological mother, family, or whānau to go into State care in Aotearoa New Zealand. It also describes an older child's journey into State care.

Difficult histories – The term 'difficult histories,' which encompasses the systemic and structural violence colonisers have inflicted on Indigenous peoples (Epstein & Peck, 2017)**,** does not refer simply to a collection of past events. Aotearoa New Zealand's national history is the very fabric of our national identity, shaping how governments, individuals, and communities perceive themselves and others (Wallis, 2019).

When a country's national history is based on myths and inaccuracies, the accurate and often difficult histories, including evidence of violence, racism and discrimination, need to be explored and addressed (Gross & Terra, 2019). Acknowledging these difficult histories can prompt reflection and dialogue, leading to a re-evaluation of national narratives and the maturation of a society (Brave Heart et al., 2011; Epstein & Peck, 2017; Gross & Terra, 2019; Smith, 2012).

Aotearoa New Zealand, like other colonised nations, has a difficult history full of trauma, especially for Māori, yet much of that trauma is generally unknown within the wider population (Bell, 2022; Buchanan, 2018; Jackson, 2019; Mikaere, 1994, 2011; O'Malley & Kidman, 2018; Pihama et al., 2014). The State removal of children from family, whānau, hapū and iwi is part of Aotearoa New Zealand's difficult history. The history of this State intervention impacts unequally on single mothers and poor and Indigenous families, who all commonly experience multiple intersecting forms of structural discrimination (Davidson et al., 2017; RCAC, 2020; Stanley, 2016; WO, 2020; WT, 2021).

Gross and Terra's (2019) description of difficult histories have four core characteristics, described on the next page, which are relevant to the State removal of children from their families in Aotearoa New Zealand, especially the separation of Māori children from their whānau.

1. They are central to a nation's history regardless of recognition by State duty-bearers or leaders, signifying their significant role in the nation's development even if not officially acknowledged.
2. They challenge widely accepted versions of the past or shared national values, often contradicting commonly held beliefs and values, thus prompting a re-evaluation of national narratives.
3. They have a legacy that connects to questions or issues in the present, leaving a lasting impact that influences contemporary questions and issues, leading to ongoing reflection and dialogue.
4. They often involve violence, particularly in the colonisation of Indigenous people, usually collective or state-sanctioned, highlighting the historical involvement of violence, especially in the colonisation of Indigenous populations with state support or involvement.

Exploring difficult histories, such as colonisation, can cause "emotional pain or trauma," (Gross & Terra, 2019, p. 4) especially for Indigenous peoples who may have "unresolved grief across generations" (Brave Heart, 1999, p. 60). Acknowledged examples of this relived pain are the survivors of abuse in State care retelling their experiences to the Royal Commission of Abuse in State

and Faith-based Care (RCAC), and the individual and whānau stories that informed the Hastings case inquiries reports.

The term "in the best interests of the child" comes from Article 3 of the *United Nations Convention on Rights of the Child 1989* (UNCRC, 1989, Art. 3), and the concept is described more fully in Chapter 4.

Other terminology in this thesis – Terms from te reo Māori are included with an English translation provided at the first use of each term and formatted as recommended in *Te Taura Whiri i te Reo Māori (Māori Language Commission) Guidelines for Māori Language Orthography* (2012). Pākehā is the Māori term used to describe both European settlers and New Zealanders of European descent described in *Te Aka Māori Dictionary* (2023).

References throughout to State agencies, non-governmental organisations, position titles, governments, political parties and politicians, government inquiries and reports, all refer to the Aotearoa New Zealand context unless otherwise specified.

1.10 Structure of the thesis

This study is presented in seven chapters as follows:

Chapter 1: Research Overview identifies the broader societal context for this research in Aotearoa New Zealand, and set out the research objectives, research questions, and key terms and concepts used.

Chapter 2: Research Design and Methodology describes the research paradigm, design, and approaches to ontology, epistemology axiology and methodology which informed the methods used.

Chapter 3: Research Methods describes the techniques and procedures used to collect and analyse research data. It also outlines the types of information sought from participants, and how those tasks were undertaken ethically and with academic rigour. This chapter not only demonstrates the congruence between the philosophical underpinnings in Chapter Two and the steps taken to answer the research questions, but also the measures employed to enhance the study's validity.

Chapter 4: Conceptual Framework provides the human rights philosophy and frameworks adopted for the study, including Te Tiriti 1840, and Māori and Western protective child and kin bioecological models.

Chapter 5: The State Uplift Practice in Literature gives an example of a baby uplifted from its mother and taken into State care. It compares that experience with most babies' typical hospital birth-to-home journey. The five inquiries into the Hastings case (2019) are analysed along with other research on the public service and public servants' role in uplifts.

Chapter 6: Finding the Voices of Participants reports the perspectives of public servants and public policy professionals who took part in the study. It not only gives voice to those participants but also clarifies why their perspectives are crucial to the conclusions of this research.

Chapter 7: Discussion and Implications for Practice reflects the participants' voices in line with other literature. The chapter considers this study's implications for practice and education for public servants involved in uplift practice. The research limitations section offers suggestions for further discussion and research.

Chapter 2: Research Design and Methodology

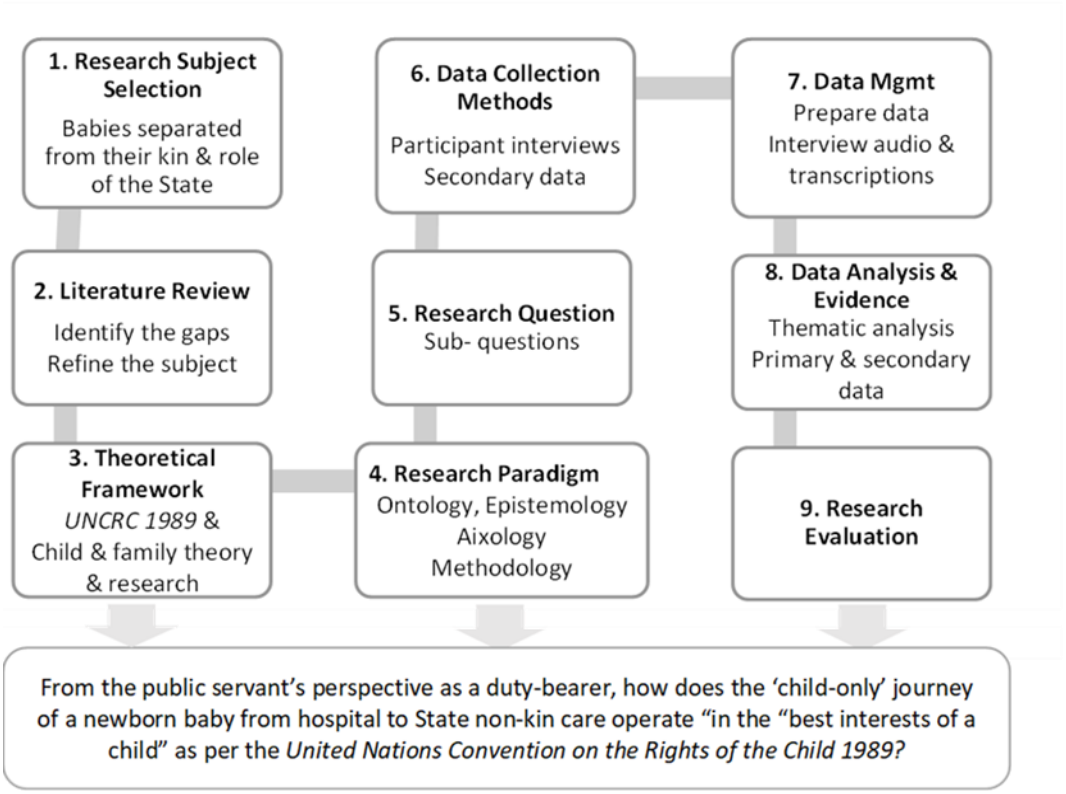
Following on from the previous Research Overview chapter, this chapter details the research design, outlining how the interpretivist paradigm informed the research thinking regarding the ontological, epistemological, and axiological approaches used in this research. This qualitative research applied an interpretive description research paradigm to study the State uplift practice, to understand and interpret its purpose and meaning through public servants' and human rights practitioners' subjective perspectives and experiences (Macionis, 2012; Thorne, 2016).

2.1 Research design overview

The research design is the plan addressing a research inquiry or research question (see Figure 1). Design involves the intersection of philosophy, strategies of inquiry and specific methods, and the research audience (Creswell, 2008; Denzin & Lincoln, 2011; Giorgi, 2009; Moustakas, 1994).

Figure 1

Research Design Overview



2.2 Research paradigms - philosophical background

Research paradigms reflect our beliefs about the world we live in and want to live in (Cresswell, 2009; Lather, 1986), and this section explores the research philosophies (Lincoln & Guba, 2000) or research paradigms (Saunder et al., 2007) that guided the research design of this study (Denzin & Lincoln, 2000; Thorne, 2016).

Four significant elements of philosophy make up the research paradigm: methodology, ontology, epistemology, and axiology. Axiology, the study of values, is often overlooked in determining the research paradigm and must be considered in research about public servants and the State uplift of children (Deane, 2018; Heron et al., 1997). Methodology is central to, and interconnected with, ontology, epistemology and axiology thereby creating a holistic view of knowledge, of how people see themselves with this knowledge, and the methodological strategies used to discover this knowledge. There is synergy between how I, as a researcher, see the world and reality (ontology), how I think about the world (epistemology), how I think about acting in the world (axiology), and then act (methodology) (Aliyu et al., 2015). This connected approach is based on the human rights conceptual framework used in this research and illustrated in Chapter 4.

2.3 Conceptual framework – human rights

This conceptual framework played a pivotal role in this study by delineating the human rights framework, social-ecological models and research which can support the dyad of the child and mother (kin) despite separation due to a child's placement in the State welfare system. This framework not only informs the research goals, but also significantly shapes the research questions, thus guiding the exploration of the topic through literature and interviews (Maschi, 2016).

This framework informs readers about "which conversation we are in" (Thorne et al., 2016, p. 2). A framework's practical approach helps limit the scope of data collection by focusing on specific variables, such as public servants' perspectives and specific human rights, and child- and family-centred frameworks relevant to analysis and interpretation (Abend, 2008; Swanson, 2013).

The research process for the present study was guided by the conceptual framework in four ways:

a. Providing a human rights lens to the research topic
b. Informing my decision-making and ensuring the inclusion of multiple perspectives, approaches, and methods
c. Upholding the core human rights values of dignity, respect, and worth of the 'whole' person within the research processes.; it also emphasises equality in the relationship, participation, and communication with the research participants, ensuring their voices are heard and respected (Maschi, 2016)
d. Encouraging the use of holistic data analysis, discerning meaning from interviews (primary research) and numeric data and other reports (secondary research), and allowing me to disseminate findings thoughtfully (Maschi, 2016).

While conceptual frameworks can be misused, or introduced and then forgotten, this research took steps to avoid such pitfalls. The framework was woven through the research philosophy, research paradigms, methodology and methods of this study, ensuring their consistent and appropriate use (Sandelowski, 2000).

2.4 Methodology

2.4.1 Characteristics of qualitative research

As this research is about understanding the perspectives of public servants working in the health, welfare, and justice sectors by recording their data through interviews, a qualitative approach was most appropriate. Qualitative research generates knowledge grounded in human experience (Sandelowski, 2004).

Both Marshall and Rossman (2011) and Cresswell (2014) emphasized the crucial role of the researcher in qualitative research: setting the natural environment for data collection; actively collecting and examining data; conducting interviews; and verifying findings with participants. This

triangulation method, which uses multiple sources of data, is a testament to the researcher's dedication to ensuring the validity of the narrative (Riessman, 2008).

In qualitative research, many interpretations of reality exist, and what is offered in this research is a subjective interpretation, strengthened and supported by reference to participants' verbatim statements. From an interpretive perspective, knowledge of reality, as in qualitative description research, is socially constructed by the participants and the researcher. Therefore, this approach recognises (Bradshaw et al., 2017; Guba & Lincoln, 1994).

Qualitative research is a collaborative approach that seeks to explore and understand the meanings individuals or groups attribute to a social or human problem (Creswell, 2014). Merriam and Tisdell (2016) affirm that qualitative research aims to reveal the meaning of an occurrence for the people involved. This approach is not about the researcher imposing their interpretation but about identifying how people describe their experiences and the meanings they attribute to them (Caelli et al., 2003; Merriam & Tisdell, 2016).

A qualitative description approach, through face-to-face interviews, allowed me to gather detailed descriptions of the uplift process phenomenon. Within the process, I strived to stay close to the "surface of the data and events" (Sandelowski, 2000, p. 336), recording experiences and events so that participants and other researchers would consider them accurate (Sullivan et al., 2005).

According to Merriam and Tisdell (2016), a qualitative research approach incorporates four characteristics compatible with an interpretive description as outlined (Thorne, 2016).

1. The study aims to understand people's experiences.
2. The instrument for data collection and data analysis is primarily the researcher.
3. The study data is analysed inductively.
4. The detailed description is from multiple data sources such as documents, field notes and interviews.

Data collection, coding and analysis are the dynamic processes that interweave throughout qualitative research (Glaser & Strauss, 1967). An iterative research approach empowers the

qualitative researcher with the flexibility to change the line of inquiry and explore new directions as more information emerges (Blumer, 1999). This adaptability is a key strength of qualitative research, enabling researchers to respond to the evolving nature of their subject matter.

2.4.2 Interpretive Description

> Interpretive description designs will in various ways, search out and explore features of a common issue but will seek to render an understanding of them that honours their inherent complexity. (Thorne, 2016, p. 83)

After a thorough exploration of various qualitative research methodologies, including narrative inquiry and action research, I saw the unique aspects of nursing research leader Sally Thorne's interpretive description (ID) approach, which I chose as my research methodology. This approach, pioneered by Thorne, is characterized by an "integrity of purpose" derived from three sources: a real-world question, an understanding of what we know and do not know based on the research available (literature review), and an "appreciation and understanding for the conceptual and contextual realm within which a target audience is positioned to receive" the research findings generated (Thorne, 2016, p. 40). The ID approach aligned perfectly with my research needs, as it allows for the translation of participants' insights about the research topic into practice in a public sector setting.

ID is an applied research methodology rooted in phenomenology, ethnography, and data-based theory (Teodoro et al., 2018). Qualitative research approaches originated in anthropology, sociology, and philosophy (Thorne, 2014). In this way, ID builds on what is familiar by linking it to prevailing methodological philosophies and research methods, with the results not overly theorised but offering practical solutions to the research questions raised.

One of the most reassuring aspects of Thorne's ID approach is its adaptability. Initially used exclusively within the health sector (Oliver, 2012), ID has since been successfully applied to broader disciplines, including education, art therapy, and now in welfare and educational settings (Cluett &

Bluff, 2006; Mellor et al., 2019) and even tourism (Burns, 2009). This flexibility was particularly relevant to my research, which involved participants from the health, welfare, and justice sectors.

I tried to clarify the links between methodologies and epistemology, exploring how each methodological choice would allow or preclude research questions and, if so, what the data collection implications would be. I also evaluated each methodology for the degree to which a structure imposes on the analysis. A critical thought in this process was the importance of being mindful that my methodology must be consistent with the intended central aim for the research, to influence practice. From the outset, I saw the benefits of ID and Thorne's approach because the research using that methodology included implications for practice.

ID is a methodology that accepts the researcher's position within the study's ideas and context (Thorne, 2008). This principle differs from other methodologies, including phenomenology, which may expect the researcher to strive towards 'epoché' (Zahavi, 2003) or bracketing one's individual experiences and subjective quantitative research, which may be difficult for a researcher to implement.

Thorne emphasizes that the researcher must have "sufficient grounding in the discipline to discern its scope and boundaries, its angle of vision on problems and its philosophical underpinnings to what constitutes knowledge" (Thorne, 2008, p. 43). My extensive work experience in the public service, spanning over 20 years, provided me with this grounding, particularly in understanding the unique context of Aotearoa New Zealand, which was crucial for this research inquiry.

Using an ID approach means the relationship between the researcher (me) and each research participant requires openness, trust, and active listening (Marshall & Rossman, 2011). Previously, I had used these skills in recording oral history interviews. The researcher must also "be prepared to follow their nose and, after the fact, reconstruct their narrative of inquiry" (Clandinin & Connelly, 1990, p. 7), which suited my background and training in journalism.

2.4.3 Rationale for Interpretive Description

The ID methodology was chosen for its ability to acknowledge the subjective reality of the researcher and the participants and demonstrate a deep respect for individual experiences and interpretations (Borland, 1990). ID was selected for the following factors that make the methodology:

- Inclusive and recognises the importance of context (Crotty, 1998)
- Open to explorative questioning to capture the multiple realities in the research area (Thorne, 2014)
- Enable the exploration of the meaning of experiences (Crotty, 1998; Henderson, 2011)
- Grounded in real-life situations (Guba & Lincoln, 1982)
- Cognisant that reality (ontology) is immeasurable and intangible (Borland, 1990).

By selecting ID, the research reflects the dynamic nature of the real world and allows for flexibility, responsiveness and deeper more nuanced meanings to the interview data collected (Thorne, 2016). ID also works well with thematic analysis, as developed by Braun and Clarke (2006, 2013), which was the data analysis method chosen for the present study.

2.5 Ontology

Ontology is essential to a paradigm as it helps to provide an understanding of the things that constitute the world as it is known (Denzin & Lincoln, 2014; Scotland, 2012; Scott & Usher, 2004), what phenomena exist in the world, and how we categorise them (Scales, 2012).

Cresswell (2009) described ontology as the first phase in the research, with epistemology, methodology, and methods following in that order. The ID ontology is based on the perspective that reality is constructed through social interaction and diverse experiences (Thorne, 2016). In ID, the researcher finds and represents the participants' experiences in their expressed form. Accordingly, in-depth interviews, a method that allows for detailed descriptions, were chosen for this research.

2.5.1 Child as becoming and adult as being

Ontology also affects the ways the child is viewed as a member of family and society, which are important concepts in this research. In *Traditional Māori Parenting* (Jenkins et al., 2011), the following description reveals how Māori viewed children before colonisation.

> Pre-European contact socialisation methods of children were based on philosophical beliefs which begin in the spiritual world. All Māori whakapapa to Io Matua and ngā atua (Māori gods). This relationship meant that, for children, they were ata ahua - they were the face of Io, of the supreme being. Children therefore were perfect underneath everything. This belief was what stopped any maltreatment of the child. To harm the child was to harm the atua. (Jenkins et al., 2011, p. 30)

This comment identifies that in te ao Māori, children had, and have, status and respect, as they represent both the past ancestors and the future generations and are part of a wider ecosystem.

Traditionally, in Western societies, the child was viewed as in the process of becoming fully human, while adults were fully human beings (Cassidy & Mohr Lone, 2020). The idea of moulding a child's mind to adulthood through education was promoted for centuries. Philosopher John Locke described a baby's mind as a 'tabula rasa' - a blank slate primed for learning and ideas informed by experiences gained by using the five senses (Duschinsky, 2012; Locke, 1690/1948)

Traditional and male centric Western ideals also regard children as possessions to be "owned by their parents" (Lee, 2005, p. 3). Griffith (2016) noted that "the notion of children as parental possessions [means] power rests with the parents, [and that] children should be silent and obey were part of Victorian society" (Griffiths et al., 2016, p. 169). This attitude was apparent in 2007 in Aotearoa New Zealand when the *Crimes Act 1961* was amended and the legal defence of "reasonable force" for parents prosecuted for assault on their children. Before the legislation enactment 'the anti-smacking Bill "garnered widespread resistance from parental lobby groups in favour of the right to smack their child/children (Wood et al., 2008).

From child observations, psychologist Jean Piaget (1896-1980) discounted the idea that children were empty vessels that adults could pour knowledge into and proposed that children were active participants exploring their world to understand it, a notion which influenced education (Piaget, 1952; Freeman, 2007). Yet the concept of viewing the child as a work in progress informed over 100 years of child welfare practice (Griffith, 2016; Iwanek, 1997, 2018; Ludbrook, 2020).

Social historian Hugh Cunningham's *The Invention of Childhood* (2006) highlighted that in recent times, adults have worked to prolong childhood, treating children as though they are incapable. This approach results in more parental involvement and less independence for the child than in previous centuries.

The concept of the child's voice being paramount in decisions about them, as expressed in UNCRC, 1989, is still relatively new to modern State child welfare policy and practice so can create tension (Freeman, 1998; 2007; Ludbrook, 2020) or the rights can be ignored (CRC, 2023). Educationalist Sarah Te One (2011) described the complexity, "Implementing children's rights takes more than moral fortitude and rhetoric to become a reality; it needs political conviction to implement policy" (p. 43).

2.5.2 Essential Dependence, Relationships and Belonging

The UNCRC stresses that children are citizens, with human rights reinforced through local laws and upheld by duty-bearers (UNCRC, 1989). However, these rights are not easily enforceable (Bouman, 2015; Higgins & Freeman, 2013), and because of their age and living situation, children cannot always know or articulate their rights. Sociologists Allison James and Alan Prout (1997) critiqued the dominant Western framework where children lacking in power can become mute and invisible in the adult-run society, significantly impacting their visibility. This outcome has been shown with children in State care (OCC, 2016, 2019; Poutasi, 2022; RCAC, 2020). This way of regarding children is in sharp contrast to how Māori view children "as belonging to whānau, and beyond that to the hapū and iwi" (Durie-Hall & Metge, 1995, cited in NZLC, 2004, p. 11).

2.6 Epistemology

Epistemology refers to the nature and origin of knowledge and truth, and applying ID is relative, where "Knowledge is relative to particular circumstances—historical, temporal, cultural, subjective—and exists in multiple forms as representations of reality" (Benoliel, 1996, p. 407). Guba (1990) describes epistemology as how we know something, and Scotland's definition (2012) includes how knowledge is formed, gained, and communicated. The nature of knowledge and justified belief is epistemology, according to Berger (2015).

Salmond (1985) argued that with dominant Western epistemologies, widely used in Aotearoa New Zealand, all forms of knowledge are judged by this standard. However, it is crucial to recognize that Māori have their own unique epistemology, including mātauranga (Māori knowledge), which is valuable to Western science and should be integrated into the knowledge landscape.

Researchers play a pivotal role in shaping their research approach through their chosen epistemological position. In this qualitative interpretive research, the epistemological position adopted was relativism, which asserts that reality is subjective and varies from person to person (Crotty, 1998; Parahoo, 2014).

As a researcher and a former journalist, I knew that a degree of scepticism is required to validate research findings. Scepticism's philosophical foundations came from the Greek philosophers in the third century BCE. It is an approach to suspending judgment applied in any inquiry, particularly in the sciences (Vogt, 2021). However, few researchers are without biases. In its more common use, scepticism is an attitude of doubt in people's views on various topics such as climate change, vaccination and evolution.

It is worth noting that both qualitative and quantitative research use multiple validity criteria, sometimes similar methods such as systematic sampling, triangulation, constant comparison, proper audit and documentation trails through the research process (Hayashi et al., 2019; Leung, 2015).

2.6.1 Hermeneutic Circle and interpretation

Epistemology informed the use of the Hermeneutic Circle approach to select the research literature (Gadamer, 2004; Heidegger, 1927/2011; Horrigan-Kelly et al., 2016). Hermeneutics, the art of understanding and the study of interpretation (Boell & Cecez-Kecmanovic, 2010; George, 2020), was primarily formulated by the philosopher Hans-Georg Gadamer as a method of connecting interpretive experience to the practice of education (George, 2020).

Philosophers Wilhelm Dilthey and Martin Heidegger, in *Being and Time* (1927), created the hermeneutic circle, a critical concept in interpretivism illustrating that meaning is a circular and iterative process. The circle involves the German concept of 'verstehen' – understanding the insider's perspective and context (Heidegger, 1927/2010; UDehn, 2001), originating from monk scholars' intense study and interpretation of early religious texts (Ramberg & Gjesdal, 2009). This approach involves analysing and selecting the information to include and discarding other material. Moving back and forth between sections and the whole text results in the emergent interpretation applied in research (McAuley, 2006).

With epistemology, the linking of the researcher and the object of the study means that findings are created within the context of the situation that shapes the research query (Guba & Lincoln, 1994). This approach includes assumptions about how people come to know what they know and the nature of the relationship between the researcher (the knower) and the focus of the research.

A reflexive researcher is not just a facts reporter but also constructs the research interpretations, including asking, what do I know? and simultaneously questioning how those interpretations came about - how do I know what I know? (Hertz, 1997). Researcher reflexivity was, therefore, an essential part of this research process, as reflected in the rationale for this research (see Chapter 1).

2.6.2 Role of the researcher and trustfulness

An insider's view and description of reality, which represents an emic approach (Fetterman, 2008) is situated within a cultural relativist perspective, recognizing behaviour and actions as relative. As a former public servant who has worked in the public health, welfare, and justice sectors, I may have 'insider' (emic) knowledge of how the system works; however, I am still largely an 'outsider' (or etic) to the lived experiences of the research participants. For example, I do not know personally what it is like to be a public health or welfare worker who cares for clients, or to be a public policy official who is seeking to incorporate UNCRC's international framework into Aotearoa New Zealand's legislation and policy.

According to Holloway and Jefferson (2013), it was essential that I did not have a 'God's eye view' or give myself the status of being a neutral researcher.

> The goal here is not to eliminate bias – because that would be futile – but rather to enhance the trustworthiness of the findings by including and documenting multiple perspectives on the focus of the inquiry. (Spencer et al., 2014, p. 83)

The practice of reflexivity is, therefore, a crucial element of qualitative research. Reflexivity is not just a tool, but a powerful lens that empowers the researcher to be responsive and ethical (Morse et al., 2002; Olmos-Vega, 2022). This practice illuminates the degree of influence a researcher places, either intentionally or unintentionally, on the findings (Jootun et al., 2009). Reflexivity can be described as turning the researcher's lens back onto oneself to recognise and take responsibility for one's position within the research and the effect that it may have on the setting, participants, questions asked, data collected, and data interpretations (Berger, 2015). Accounting for my thoughts and actions through reflexivity added rigour to this research, as described in Section 3.9 on trustworthiness.

Within reflexivity, there are three methodological perspective-taking steps:

1. Activating the mental process of perspective-taking
2. Anchoring own perspective and dissecting the perspective of others

3. Equilibrium—negotiating different understandings without imposing commonly shared meanings (Finefter-Rosenbluh, 2017).

Using these steps, I reflected on my own experiences throughout the research process by writing a reflexive journal prior to defining the research question, so preconceptions would be identified and reflected on throughout the research process (Ahern, 1999). I also wrote memos throughout data collection and analysis as a means of examining and reflecting upon my engagement with the data (Cutcliffe, 2003). Respecting and protecting the interview participants' stories and keeping their identity confidential if requested, was also important as not doing so breaches the balance of collaboration and the ethics of research (AUT Ethics EA1, n.d).

The concept of reflexivity also raised epistemological issues throughout this research about how to apply and improve on existing research processes (Dowling, 2006; Willig, 2001). At times, these questions were helpful in refining and planning this research (Dowling, 2006; Willig, 2001). At times, these questions were helpful in refining and planning this research, as well as for the implications of the findings.

2.6.3 Logic and reason

Logic and reason are part of epistemology (Holliday, 2016; Rendsvig et al., 2023). Logic is about how to think in a structurally sound manner and is vital when looking at the validity in the research and presenting valid arguments. Logic, a fundamental component of research, manifests in two distinct forms: deductive and inductive reasoning (Saunders et al., 2009).

Traditionally used in scientific quantitative research, deductive reasoning involves examining a general case, deducing a comprehensive set of rules or principles, and then applying those rules to specific cases. Inductive reasoning involves taking specific examples and considering the general principles, rules or cases that caused them. Philosopher A.C. Grayling (2010) described how deductive and inductive reasoning are commonly used in research.

> From Plato to the twentieth century, *logic* was mainly viewed in the deductive scientific way that inferred the solution to the problem lay in the data presented and it was just a case of

> reorganising the data in the right way for the solution to appear. This was relevant in the present research when looking over secondary data or other research in the literature review, to identify any gaps. Inductive inferences are the "out of the box thinking" which goes beyond the data, recognising that nothing exists in isolation. (Grayling, 2010, p. x)

Like scientist philosopher Thomas Kuhn, educationalist John Dewey challenged the assumption that social inquiry is scientific if proper observation and recording techniques (preferably statistical and borrowed from science) are employed (Beauclair, 2010). In his 1938 work *Logic: The Theory of Inquiry,* Dewey criticised the scientific and symbolic approach being only applied to logic in research, meaning that "different types of problems demand different modes of inquiry for their solution" (Dewey, 1938, p. 76).

Kemmis (2009) described Dewey as the originator of action research, although other researchers say social psychologist Kurt Lewin invented both the phrase and the action research model in his 1946 article, *Action Research and Minority Problems* (Adelman, 1993; Argyris et al.,1985; Lewin, 1946). Adelman (1993) says Lewin's ideas were complex and involved "minority groups" overcoming "the forces of 'exploitation' and colonialisation that had been prominent in their modern histories" (Adelman, 1993, p. 8).

Dewey's philosophy (1938) suggests that inquiries are explorations of theory and practice and are evaluative. This approach identifies the weakness of most research by selecting the methodology without clearly understanding the problem. Dewey recommends that once the problem is identified and the scope is defined, the problem is then investigated from various perspectives, based on differing experiences, depending on the purpose or objective of the inquiry (Kaushik & Walsh, 2019). Thus, the researcher is using both deductive and inductive reasoning.

According to Dewey's earlier work, *How We Think* (1933), a great degree of "open-mindedness" is needed, which "includes an active desire to listen to more sides than one; to give heed to facts from whatever source they come; to give full attention to alternative possibilities; to recognize the possibility of error even in the beliefs that are dearest to us" (Dewey, 1933, p. 136).

This view reflects the overall approach applied in this research by viewing the research question through various paradigms to see which was the best fit. Examples of Dewey's approach in this research are the inclusion of a diversity of participants, in terms of key attributes such as occupation, years of experience, ethnicity, gender, to discuss the research subject from their angle or experience. By having participants check their participant data and interview transcripts and data triangulation using other research and information to capture broader perspectives, and the use of active listening and thematic data analysis helped with implementing Dewey's 'open mindedness' (Braun & Clark, 2006, 2012).

2.7 Axiology

Axiology, or value theory, is the modern branch of philosophy that studies judgments about values, including ethics and aesthetics (Hirose & Jonas, 2015). Ethics questions morals and personal values, while aesthetics examines what is beautiful, enjoyable, or tasteful. In axiology, education transcends mere knowledge acquisition; it is a transformative process that enlightens the quality of a person's life and experience (Dewey, 1958; Heron & Reason, 1997).

Specifically, axiology was implemented in the present study by assessing the role of my values at all stages of the research and what I valued in the research findings. Considering that the conceptual framework I chose for this research is a human rights lens, and this research topic explored the significance of human rights and equality for newborn babies and their kin, an assumption could be that I believe in equality of outcomes and fair treatment and of recognition of Te Tiriti o Waitangi in State practices. Throughout the research process, I formally reviewed and checked my own values using the epistemological practice of reflexivity and also had my supervisors critiquing my values and viewpoints in the research.

Axiology also played a crucial role in guiding the research ethics process, reassuring the integrity of the research and the ethical relationships with research participants, and the protection of their personal information and will be further examined in the next chapter.

Chapter 3: Research Methods

The previous Research Design chapter outlined how the interpretivist paradigm informed this researcher's thinking regarding the ontological, epistemological, and axiological approaches used in this research. Methods are the specific techniques and procedures used for collecting and analysing research data (Crotty, 1998). The methods chosen must fit with the research's overall philosophical, epistemological, and ontological assumptions (van Manen, 1998). In this chapter, I demonstrate the consistency between the questions posed and the methodological approach used (Glaser & Strauss, 1967).

3.1 Data collection

In ID qualitative research, semi-structured in-depth interviews are the primary source of data collection (Thorne, 2016). Interviews are the most common qualitative research technique (Fink, 2000).

This research used three data collection methods:

1. Primary data: In-depth semi-structured interviews with public sector professionals, and the transcripts of the interviews.
2. Primary data: Researcher field notes, in the style described by Groenewald (2004):
    a. Observational notes (ON); notes on what happened, necessary for recording researcher observations
    b. Theoretical notes (TN); the meanings the researcher gives to observations, or reflections on the research experiences (reflexivity notes)
    c. Methodological notes (MN); researcher reminders and instructions on the process
    d. Analytical memos (AM); end-of-interview summaries, notes, or progress reviews.

3. Secondary data: Review of other documents, including research articles, books, reports, statistical data, video and oral recordings, and digital materials used.

In ID, the relationship between data collection and analysis is continuous and intertwined (Thorne, 2014). In my research, interviews were recorded and transcribed, and field notes captured researcher interview observations to contextualise the analysis. Writing field notes during the research process helps to clarify each interview context and to capture some early thoughts on themes (Groenewald, 2004; Miles & Huberman, 1984, 2014).

3.2 Evidence review

The evidence review identified and examined the literature and other broader material relevant to the research topic. By delving into the historical context and addressing the gaps in the literature and other available material, I was able to refine the research scope and questions, avoiding duplication of existing research. This review not only helped refine the research rationale but also offered a unique lens to view this research idea within the context of existing literature, thereby justifying the need for further research.

Some historical material showed the State uplift practice had its foundations in nineteenth-century societal attitudes and practices, strongly influenced by the British colonisers in New Zealand. The timing of five inquiries stemming from the Hastings case (May 2019) and the Royal Commission's Inquiry into Child Abuse in State Care (2019-2024) further emphasised the necessity for a unique perspective, specifically, the role of public servants in the State uplift intervention and the uplift act as a public service. After the release of the Hastings case media documentary, the subsequent five inquiries resulted in informative data for this research. Interviews with mothers and whānau who had had their babies and children removed were included in some of those inquiries, as identified in Table 1 (on the following page).

The review included consulting several hundred books from AUT, Massey University, and other libraries. This strategy also involved reading articles, viewing online and in-person seminars by key academics in relevant fields, accessing a detailed oral history interview I had previously

conducted with a former social work manager and nurse, but this is not included in my research with interview participants, and soliciting suggestions for relevant resources from interview participants. This multi-pronged approach ensured a thorough exploration of the research topic.

Table 1

Inquiries and reports following the Hastings case in May 2019

Report	Purpose	Period
Oranga Tamariki	Internal practice review of the Hastings case	Completed: Nov 2019
Office of the Children's Commissioner	Thematic review of Oranga Tamariki's policies, processes and practices relating to care and protection issues for tamariki Māori aged 0-3 months	Jan 2020 stats June 2020 (1) Nov 2020 (2)
Chief Ombudsman	Systemic improvement investigation: Oranga Tamariki – newborn removal	Completed: Aug 2020
Whānau Ora	Whānau with lived experience of Oranga Tamariki policies and practices, were at the centre of their report	Completed: Feb 2020
Waitangi Tribunal (WAI 2915)	Te Tiriti consistency in legislation, policies, and practice around tamariki Māori in state care	Completed: April 2021

Note: Some of the inquiry reports included interviews with health, welfare, and legal professionals, and this and follow up commentary and research, where relevant, was essential to my interview findings, so I have updated this literature review until May 2024.

There was little domestic or international information when I started researching the child-only journey from birth in a hospital to living in State care through State fostering. There was, however, considerable information about adoption and the separation of mothers from their babies. I found over 13,959 peer-reviewed articles in international academic journals through the AUT library database, with 7,384 published articles in the last 10 years. The adoption information, particularly in the historical context, pertains to this research topic because it documents the journey of single mothers who were often pressured by families, health professionals and State agencies to give up their babies or who had had their babies forcibly removed from the hospital for

adoption by non-kin strangers. This forced adoption scenario was prevalent with closed adoptions (Iwanek, 2017), and force was also shown in instances of the State uplift practice (OT, 2019).

The adoption literature gave invaluable insights from adopted people who are now adults reflecting on their removal from their biological families and their later search for kin or their missing identity and whakapapa. Research on children separated from their parents at the United States border is another new avenue of child trauma, attachment, and separation research (de la Peña et al., 2019). To a lesser degree, some information about parents separating and the effect on their children was helpful. I also looked at separation after family violence and found this information helpful, especially with the research around ex-partners targeting the custodial parent, usually the mother, through complaints to child protection services.

Finally, a search was done to identify if there was any research on how the separation of mother and baby at birth fits with the UNCRC, 1989, in particular Articles 3, 7, 8, 9, 10, 11, 18, 19, 20, 23, 25, 30 – all pertaining to birth identity, culture, and the right to live with or be connected to family. This search included online background courses, including *Child Protection: Children's Rights in Theory and Practice* from Harvard University, and UNICEF's course on *Child Rights and Why They Matter*. While working at government agencies, I had completed compulsory training modules on the requirements for working with children under *the Vulnerable Children's Act 2014*. This learning also gave me a greater understanding of the reporting process.

3.2.1 Search terms

Thorne's (2008) caution not to rely solely on the most common search words allowed me to identify certain keywords, such as the ones listed below, as a starting point. I broadened my search, and then narrowed down the search, following key researchers and key research organisations.

The literature search was conducted through AUT and Massey Universities and the National Library catalogues to access books and online journals, using the databases Internet Archive Scholar, Methods, PubMed Central, ResearchGate, Semantic Scholar, Scopus, and Web of Science.

Combinations were used of the following search terms: 'infant', 'baby', 'babies', 'child', 'vulnerable', 'vulnerable child', 'children', 'child health', 'child development', 'child centric', 'child-centred/centered', 'person centred care', 'family'/'families', 'patient centred/centered care', 'patient journey', 'customer/client journey', 'in care', 'institutional care', 'abuse', 'at risk', 'birth mothers', 'mothers', 'attachment', 'separation', 'adoption', 'adopted', 'adoptive parents', 'foster parents', 'fostering/foster care', 'prenatal stress', 'antenatal stress', 'risk factors', 'communication barriers', 'organisational barriers', 'system barriers', 'State care', 'outcome', 'longitudinal study', 'statistics', 'collaboration', 'human rights', 'children's rights', 'voice', 'best interest', 'legislation', 'policy', 'public', 'health', 'social welfare', 'social security', 'welfare', 'legal', 'whāngai', 'United Nations Charter of the Rights of the Child', 'Office of the Children's Commissioner', 'Ministry of Social Development', 'Oranga Tamariki', 'Treaty of Waitangi', 'UNICEF', and 'UNCRC 1989'.

Additional information was sought from New Zealand government sources, overseas government websites, and other website searches, and through participants. Additional 'grey' material searches explored wider media and public perspectives and reporting, via Google, Google Scholar, and other search engines.

3.2.2 Inclusion and exclusion criteria

Materials included: Any research captured by the search terms focusing on original research either cited by other researchers or which was unique in reflecting the Aotearoa New Zealand historical context. Extensive international literature was canvassed but only reviewed if it related to the Aotearoa New Zealand historical or current context of adoption, non-kin fostering, child welfare and State care.

Materials excluded: The studies selected were limited to those written in English or translated into English and published in the period 1 January 2020 to 30 September 2024. Exceptions were where earlier research was still relevant to the current context, or more recent information was pertinent, as in the Hastings case reports in 2019, the Royal Commission into Abuse in State and Faith-based Care (RCAC, 2018-2024), political commentary (2023 to March 2024), and the Oranga

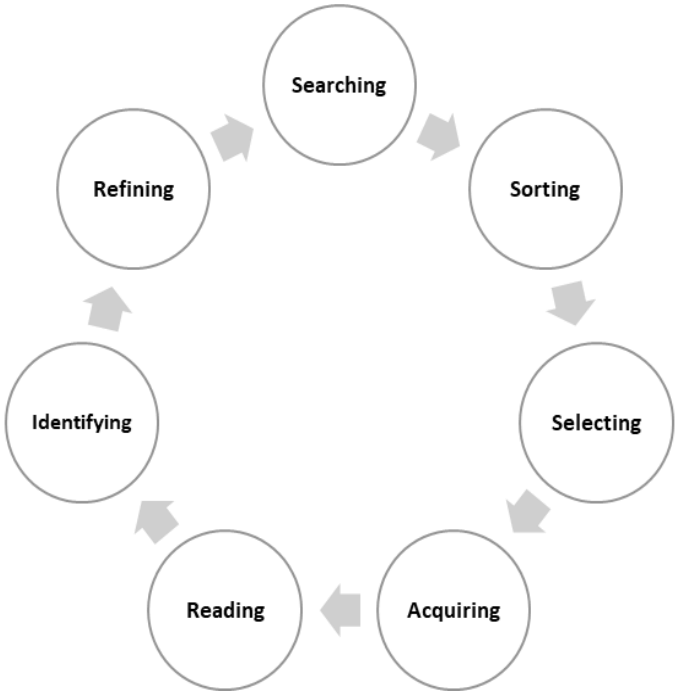
Tamariki Act 1989 section 7AA legislation changes (2024, 2025). The present research did not include the Māori cultural practice of whāngai, caring for young kin, which is quite different from caring for children by non-kin in State care and foster care and adoption.

3.2.3 Applying the Hermeneutic Circle

To refine the research inquiry scope, I used the hermeneutic circle (Gadamer, 2004), introduced in Chapter 2, to develop the literature review (Figure 4). This hermeneutic approach gives an emergent interpretation of the literature through analysing and selecting the information to include, and discarding other material, through focusing on parts or all text. Reading one article often leads to the identification of additional literature, which is then found and read and included or discarded, depending on its relevance to the research topic.

Figure 2

Hermeneutic Circle Approach to Conducting a Literature Review



Note: Adapted from (Boell & Cecez-Kecmanovic 2010, p. 134).

3.2.4 Selecting and analysing the information for themes

Primary and secondary data were analysed using a thematic analysis approach (Braun & Clarke, 2006, 2019). During the interview process, writing field notes helped with reminders and

clarification about each interview setting and advanced the early stage of identifying themes (Groenewald, 2004; Miles & Huberman, 1984, 2014).

Themes in the literature review were identified by applying Braun and Clarke's (2013) six thematic analysis phases. The thematic analysis identifies themes and uses those to address the research or discuss an issue. Although Braun and Clarke (2013) recommend using narrative text, in the literature review, I focused on text-based data to refine the contents of the literature review based on the themes. I also used Braun and Clarke's phases to analyse the interview narratives and to identify the themes relevant to the research questions.

In the first phase, I read and reread the data. In the second phase, I conducted a systematic manual coding of features that led to initial codes, before searching for themes in the third phase. Phase four involved reviewing the themes for correlation with the codes and identifying subthemes. After defining the themes in phase five, the themes were evaluated for relevance to the research question and other research themes (Clarke & Braun, 2013).

3.2.5 Data analysis

This study undertook an evidence review to fine-tune the topics and questions; interviews were then conducted, and a further secondary data search was undertaken as needed. The first step was to use the *Hermeneutic Circle* (Gadamer, 2004) approach to identify and select literature for the literature review. When secondary data appeared viable in addressing the themes raised from the primary data, I checked each piece of secondary data to ensure that it was appropriate to both the research topic and the findings (Dale et al., 1988; Kiecolt & Nathan, 1985; Smith, 2008; Stewart & Kamins, 1993). Several researchers (Boslaugh, 2007; Clarke & Cossette, 2000; Magee et al., 2006) propose a reflective approach to evaluate the data for congruency and quality (Figure 3 on the next page).

Figure 3

Analysing Secondary Data

Date info was collected?	What was the purpose of this study?	Who collected the info?	What info was collected?	How was the info obtained?	Is the info consistent with info from other sources?	How was the research published?

Note: Adapted from (Boslaugh, 2007; Clarke & Cossette, 2000; Stewart & Kamins, 1993).

3.2 Participant interviews as primary data

3.3.1 The sampling design

The sampling techniques selected within a research study reflect the research design and question. The best qualitative description sampling process is nonprobability convenience or purposive sampling (Parahoo, 2014). Qualitative researchers are most likely to elect purposive or theoretical sampling to increase the scope or range of data available, and to encourage multiple perspectives (Lincoln & Guba, 1985).

Thorne (1997) considered that the sample varies when applying ID to the number and selection of research participants. Most ID studies and qualitative research are small, with between five and 30 participants. This study had 18 participants. Outside of this group, and prior to this research, I had conducted an oral history interview of 10 hours over several weeks with Mary Iwanek which I was able to access. This oral history provided background to the literature review and this research. Ivanek had held multiple relevant roles, variously, a neonate nurse through closed adoption, a mental health nurse with children in State care, a care and protection social worker, public sector manager, university lecturer, and a supporter of mothers and families who had had children removed by the State. She also had several published works.

ID does not establish a single form or rigid procedures for obtaining the research sample group. The critical thing is to maintain the integrity of interpretation according to the nature of the

technique used, the limits and possibilities of the selected sample, and the nature of the sampling technique permit (Thorne, 2016).

The qualitative description sampling process, particularly nonprobability convenience or purposive sampling, is considered the most effective research technique (Parahoo, 2014). Choosing purposive or theoretical sampling can significantly broaden the scope of available data and foster diverse perspectives (Lincoln & Guba, 1985). This approach allows unique perspectives that might otherwise be missed.

The ID approach is not bound by a single form or rigid procedures for obtaining the research sample group, so it can adapt to the limits and possibilities of the selected sample and the sampling technique (Thorne, 2016).

Multiple perspectives gave this research the complexity and tension between individual accounts. It was important to me personally and as a researcher to include diverse people and perspectives. Integrating that multiplicity and tension into a cohesive narrative were epistemological factors I considered (McCarthy et al., 2003; Vogl et al., 2017). Having a matrix table of all the participants and the range of perspectives identified in themes was helpful.

3.3.2 Sample criteria

Participants were chosen who met either of these criteria:

- Ten years or more work experience, including 'hands-on' practice experience with the 'child only uplift journey' from hospital (or home) to State non-kin foster care
- Ten years or more of work experience working with the UN Convention on the Rights of the Child (UNCRC, 1989) human rights legislation and Te Tiriti, and working towards its inclusion in New Zealand legislation, policy, and practice.

3.3.3 Recruitment of participants

Contacting participants through existing networks and snowballed referrals from participants was effective. A sampling combination was applied purposively seeking 15-20

participants based on sample diversity in terms of role, experience, background, and relevance to the subject, together with snowballing.

Prospective participants were emailed an invitation, with a personal introduction and information about the research and its relevance to their work or organisation. This email sought their engagement and gave my commitment to follow up with them about the research within two weeks. Most participants responded within a shorter period. They then received the Participant Information Sheet (PIS), included in Appendix C and the consent form (Appendix D), giving them another two weeks to review the information before being contacted again. People invited but unable to participate often recommended another relevant person. All participants recruited freely volunteered and gave their informed consent to participate in the interview.

As autonomous agents, participants in this research knew their right to voluntarily accept or decline to participate in the study and their right to withdraw their consent at any stage of the research or to refuse to answer questions and to check and correct their transcript (Cresswell, 2014; Kvale, 1996).

The researcher must pay close attention to the possible psychological consequences for participants participating in the research (Bradshaw et al., 2017; Savin-Baden & Howell Major, 2013). As this research covered the emotional situation of a child's removal from its whānau, participants might feel emotional during or after the interview (Lowes and Gill, 2006). Therefore, the research design, before data collection, considered the potential consequences and allowed for an appropriate support referral system if participants required that (Atkinson & McNamara, 2016; Bradshaw et al., 2017). Support for participants was identified through the PIS, approved by the AUT Ethics Committee, including referral for three free AUT Health Counselling and Well-being sessions if any participant wished. This offer was also discussed with each participant before their interview. Participants had two weeks to read the supporting information, ask any questions, and think through their decision to participate.

3.3.4 Interview sample

The final interview sample comprised 18 people, aged between 30 and 80 years, each with experience as practitioners in the public health, welfare, and justice sectors, and some with experience in the policy and legal areas, including human rights, Te Tiriti and UNCRC 1989. Most participants were interviewed face-to-face between November 2019 and July 2020, with two interviews conducted in 2021. All participants were familiar with the Hastings case. Each interview was from 1.5-4 hours long, and each participant checked and approved their transcript.

Figure 4 below identifies the interviewees' past and present job roles.

Figure 4

Participant Numbers and Participants' Professions

Due to New Zealand's relatively small health, welfare, and justice sector workforce, many participants had started as practitioners and then moved into policy or research. Some then returned to being practitioners. Most participants had worked several jobs in the public service and NGO sector over 10 or more years in various locations in Aotearoa New Zealand. Several had international public sector experience. Many participants have had management or leadership positions. Moreover, all participants were not just familiar but deeply knowledgeable about

domestic and international research in their profession. The research information, included in the participant consent forms, is attached in Appendices C and D. With Aotearoa New Zealand's population being so small and cohesive, all information potentially identifying participants has been omitted.

3.4 Ethical protections

3.4.1 Ethical considerations

Researchers need to apply ethical considerations throughout all research process planning and phases. Ethical protections are essential in involving participants in the research, gaining entry to their homes or places of work, gathering personal and potentially emotional data, and asking participants to give considerable time to the study (Creswell, 2004). Not adhering to ethical guidelines can have grave consequences, such as harm to participants, legal issues, and reputational damage to the researcher and their affiliated institution.

When analysing data, Miles, and Huberman (1994) state that researchers should consider and address the following issues before, during and after the research.

a. Do participants have informed consent of what is involved in the research?
b. Can the study hurt participants or cause them risk?
c. Is the researcher truthful and honest in presenting data?
d. Will the study intrude too much into a participant's privacy, confidentiality, and anonymity?
e. What should researchers do if participants display harmful or illegal behaviour?

Protecting participants' from being identified was relevant in this research, as they were being invited to critique a government agency when several were government employees. Thus, identifying them inadvertently could compromise their employment safety and future career opportunities. So, broad job titles were adopted as references for attributing direct quotes participants.

I considered these issues while completing the AUT ethics application process and also in all communications with prospective participants and participants involved in this research.

3.4.2 Role of the researcher as sole interviewer

McCance and McCormack (2016) emphasised the importance of person-centredness in planning and undertaking research methods. In the following quote, Sandvik and McCormack (2018) reflect how person-centredness and the right to self-determination applies to qualitative interviews, adventitiously reflecting the intent of Te Tiriti o Waitangi. "Underpinning the person-centred approach are values of respect for persons and personhood as well as an individual right to self-determination. This is realised through mutual and reciprocal interaction" (Sandvik & McCormack, 2018, p. 3).

Dexter (1970) described interviewing as both a research method and a social relationship. A person-centred approach, as applied in this research, requires demonstrating empathic understanding to the other person through active listening and checking back or clarifying the researcher's understanding of the conversation point with that person (Molyneaux, 2021).

3.4.3 Ethics application and Te Tiriti o Waitangi 1840 considerations

AUT's ethics framework includes three 'treaty principles,' partnership, participation, and protection ('the 3 Ps'), that the health and education sector has traditionally used to connect their policies and practice to Te Tiriti o Waitangi, as popularised by the Royal Commission on Social Policy [RCSP] (1988). However, the Crown has acknowledged that the Ministry's 'three Ps' could be regarded as a "reductionist view of Treaty principles" (WT, 2023a, p. 8). Further, legal scholar Ani Mikaere (2021) described the 'three Ps' as part of "nauseatingly mealy-mouthed slogans" (para. 41) developed to promote the English version of "The Treaty" over Te Tiriti which is the evidence that Māori did not cede sovereignty to the British Crown by signing Te Tiriti o Waitangi in 1840.

In 2019, the Waitangi Tribunal's WAI 2575 inquiry defined Te Tiriti principles as "partnership, active protection, equity, and options" (WT, 2019, p. 27). Yet, it is becoming increasingly common to be guided directly by the Articles of Te Tiriti (Burns et al., 2024; Came et al., 2023). The Department

of Prime Minister and Cabinet (DPMC) advises all public servants and policymakers to use the Cabinet circular CO (19) 5: Te Tiriti o Waitangi / Treaty of Waitangi.

Guidance (2019), which uses the three Articles of Te Tiriti as the starting point and states "The Treaty must be considered on the whole" (p. 2), since focusing just on the principles ignores the broader context. However, it is interesting to note that the Circular, and its power to influence all public service policymakers, was criticised for promoting the English version of Te Tiriti with Māori rights to self-government through tino rangatiratanga largely ignored. (O'Sullivan et al., 2021).

3.4.4 Ethics application and approval process

AUT Ethics Committee approval was granted in September 2019 following an application that involved a doctoral supervisor consultation. The application to the AUT Ethics Committee presented the primary supervisor and covered research strategies to ensure respect for participants' rights of privacy and confidentiality, informed consent, minimisation of harm and risk, truthfulness, social and cultural sensitivity, and included a commitment to the principles of Te Tiriti o Waitangi 1840 and declaration of any researcher conflict of interest (AUT Ethics Application reference number 19/257). It also included a reference to the *Health Research Council of New Zealand Ethics Guidelines* (2018) and all information for participants (Appendix A).

3.5 Semi-structured interviews

Data was collected through individual semi-structured face-to-face interviews which is a traditional qualitative research technique (Braun & Clarke, 2006, 2013; Thorne, 2008). Semi-structured interviews are conversations where the participant and researcher actively engage in dialogue using techniques to explore and critique the participant's stories, views, and thoughts about the research topic (Thorne, 2008; Thorne et al.,1997). Interviewing allows the participants' narratives to be heard within their context of experience, upholding ID methodology (Smythe, 2012; Smythe & Giddings, 2007; Thorne, 2008; Thorne et al., 1997).

Although interviews have specific strengths, there are various limitations associated with interviewing. First, not all participants may be equally cooperative, articulate, or perceptive.

Accordingly, skill is needed in identifying prospective participants, but sometimes even this can lead to an inaudible interview. Second, interviews require researcher skills. Third, interviews are not neutral data-gathering tools, as they result from the interviewer-interviewee interaction and the context in which they occur (Fontana & Frey, 2003; Rubin & Rubin, 2005; Schwandt, 1997). My skills as a former features journalist and an oral historian supported this research method. Most interviews took place at a venue of each participant's preference, in participants' homes, or my home; only three interviews occurred at participants' workplaces, at their request, where they had access to their own office or a private meeting room which was not in public view.

3.5.1 Interview preparation

A qualitative interpretive description approach was implemented, supported by a general interview guide approach and a standardised open-ended semi-structured interview (Creswell, 2007; Turner, 2010). The semi-structured interview involved prepared questions guided by identified themes designed to elicit more detailed responses. I developed a semi-structured and open-ended interview guide reflecting the relevant general or specific direction about topics or themes to be discussed in the interviews (Miles et al., 2014; Sandelowski, 2000). This interview guide was useful to ensure that all the interviews covered the same key topics (Qu & Dumay, 2011).

Materials given to participants to refer to before or during the interview, as interview resources or triggers, were the Human Rights Commission's version of Te Tiriti o Waitangi 1840; the UNCRC 1989; the *Child and Youth Well-Being Strategy*; and the Office of the Children's Commissioner factsheets (2020), including a flowchart of the Government processes showing what happens when a child goes into State care, along with an infographic of children in State care. When setting up the recording equipment, I showed the participants these materials at the beginning of the meeting so they could refer to these documents, if they wished, during the interview.

Before the interview started, I explained the purpose of the interview, the terms of participation, including post-interview counselling, confidentiality, the format and length of the interview. I also asked participants if they had any questions before the interview and gave them my

contacts details if they wanted to follow up with me. During the recorded interviews, I also took field notes so I could recall participant's answers or non-verbal reactions.

To set up the interview well required following a process so that all participants understood what would follow and had full control over their participation.

3.5.2 Recording the Interview

All interviews were audio-recorded, except one where I took extensive interview notes and asked further questions, which the participant checked and answered by email. I hired a *Zoom H5* Recorder and lapel microphones from the National Library (Oral History Archives) to get the best possible recording. Before hiring this equipment, I attended a one-on-one training session at the National Library to refresh my technical knowledge.

3.5.3 Protecting and storing participant data

As the researcher, I adhered to the consent, interview and data storage processes to keep participants safe, including the completed AUT *Sensitive Data Safety Management Protocol* with the ethics application. Participants' personal information was protected by using general job title pseudonyms, obscuring identifying information, and aggregating the data (APA, 2020, ss. 1.14, 1.15 and 1.19).

AUT Guidelines for data management and storage were followed. *The Research Code of Conduct* and AUT's Ethics Committee's Guidelines and Procedures were read and followed, particularly regarding personal data and the Privacy Act 1993. Each participant's interview was recorded on a separate memory card and stored, for the research period, on a password-protected laptop and a password-protected hard drive. Interview files received a code linked to the participant's name, with the codes and names kept on a password-protected hard drive in a secure filing unit in the researcher's office. Consent forms with participants' names and signatures were kept separately from interview data. Once this research is over, this information will be destroyed.

3.6 Interview transcripts

The interview transcripts were an essential aspect of this research and need to be considered in the context of the live interview setting, as transcripts may not easily convey non-verbal expressions. I found the following advice helpful.

> Transcripts are not copies or representations of some original reality; they are interpretative constructions that are useful tools for given purposes. Transcripts are decontextualised conversations, they are abstractions, as topographical maps are abstractions from the original landscape from which they are derived. (Kvale, 1996, p. 165)

When transcribing interviews, these questions arose:

- Should all the interviewer's questions or only the main questions from the interview guide be transcribed?
- Should the verbalisations be transcribed literally or only in summary?
- Should interview observations or recordings (e.g., sounds, pauses, and other audible behaviours) be transcribed or not? (Schilling, 2006)

Schegloff (1997) believes these issues form a continuum of transcription practices with two dominant types: naturalism, where every utterance (e.g., stutter, ums and involuntary vocalisations) is included, to transcribed; denaturalism, where these elements of speech are omitted. These positions correspond to particular views about the representation of language. With a naturalised approach, language represents the real world. Therefore, the transcript reflects a verbatim depiction of speech. I used the naturalised approach when recording and transcribing oral history interviews, including the oral history transcript I used as background to this research. With the research interview transcripts, I only removed the stutters and repeated words after a discussion with each participant to see which approach they preferred for their transcripts. However, I also recorded in my notes, participants' emotional responses and non-verbal expressions. All participants chose to receive the edited transcripts.

3.7 Interview data analysis

An emergent strategy informed the analysis of interview data that applied Braun and Clarke's thematic analysis process (Braun & Clarke, 2006, 2013, 2019). I transcribed all data using Temi software for initial transcription, and then I corrected the first draft of the transcript by listening to each interview recording. I wrote a 1-page summary of each transcript. Then I read each transcript and organised the content data using the following visual prompts to support the process:

- Timeline charts of historical events
- Tables to summarise key ideas
- A concept framework mapping the relationship among concepts
- A tree diagram of the meanings of words
- A Venn diagram representing concepts as overlapping circles
- NVivo word count and phrase frequency.

3.7.1 Reflective thematic analysis in action

Braun and Clarke's (2006, 2013, 2019) thematic analysis method (see Table 2) was used in conjunction with ID, supported by NVivo 12 software, to first generate codes and then themes from the codes. Using NVivo, I did word-count, word/phrase frequency queries and source code data as another tool in discovering selective codes from the data. The links between themes signify relationships between ideas or categories and provide an understanding of the greater picture (Leeman et al., 2006).

3.7.2 Identifying the themes

A theme is a recurring pattern across a dataset that captures something significant or interesting – the critical ideas about the data in relation to the research question. Codes are the building blocks that combine to create themes (Miles et al., 2014; Silverman, 2015). Coding in qualitative analysis involves categorising data into concepts, properties, and patterns. I derived the codes for my analysis from the data collected, key themes identified in the literature search. After

coding the data, I built the themes or patterns to gain deeper insight into the meaning of the data. The interview transcripts offered a 'checking point' and triangulation for the findings and themes I found in the literature review (Creswell, 1998; Miles et al., 2014). Triangulation was crucial in this research, as it combined primary data interviews checked by participants and researcher notes with secondary data, including the inquiry reports (Natow, 2020).

Table 2

Reflective Thematic Analysis Six Step Model

Phases of Reflective Thematic Analysis (TA)	**Phase Process Description**	**TA Criteria (Braun & Clarke, 2006, 2013, 2019)**
1. Familiarizing myself with the data	This phase was informed by: • The literature search, which explored the historical and recent context, and identified the theoretical framework lens, and informed the research questions. • The semi-structured interview -face-to-face conversations recorded. • The transcription of the interview - I transcribed the interview data, in Temi, while listening to the audio. and then read and re-read the data, noting down initial ideas and themes.	1. Transcription: Data transcribed to an appropriate level of detail and checked against the tapes for accuracy.
2. Generating initial codes to describe the content	Two methods were used: • NVivo generated individual transcript codes (Level 1) and then I collated all the codes across all the interview data sets (Level 2). NVivo word-counts, word lists and key words in context of transcribed interviews were a second check for additional codes or categories. • Manually reading the transcripts to identify codes by writing on the transcripts and recording how these codes related.	2. Coding: Each data item has been given equal attention in the coding process.
3. Searching for patterns or themes	I collated both sets of codes into potential themes, gathering all data relevant to each potential theme. Some of these naturally were similar, so I discounted repeated themes, but noted in NVivo the participants transcripts that had references to those themes (Level 2).	3. & 4. Themes have not been generated from vivid examples, but through thorough, inclusive, and comprehensive data analysis.
4. Reviewing themes	Reviewed the themes to check if the themes worked in relation to the coded extracts (Level 1) and the entire data set (Level 2), generating a thematic map of the analysis. This phase involved checking the interview themes against the dataset, to determine that they tell a convincing data story, and one that answers the research question. In this phase, themes are typically refined, which sometimes involves them being split, combined, or discarded.	5. Analysis: Data has been analysed – interpreted, made sense of – rather than just paraphrased or described. 6. Analysis and data matched each other – the extracts illustrated the analytic claims.

Phases of Reflective Thematic Analysis (TA)	Phase Process Description	TA Criteria (Braun & Clarke, 2006, 2013, 2019)
5. Defining and naming themes	Ongoing analysis refined the specifics of each theme, and the overall story the analysis tells, generating clear definitions and names for each theme.	7. Analysis tells a convincing and well-organised story about the data and topic. 8. Balance is maintained between analytic narrative and illustrative extracts. 9. Overall: Enough time was allocated to complete all analysis phases.
6. Authoring the report	This required much time drafting a thesis structure and then chapters which were written, revised. I used Grammarly Premium and Microsoft Editor for grammar checks and the final thesis was proofread by an editor using AUT and APA 7 guidelines.	10. The final thesis

Notes: Adapted from (Braun & Clarke, 2006, 2013; 2019).

3.8 Quality and trustworthiness – verification and validity

Miles, Huberman and Saldana (2014) reviewed 26 tactics to verify research findings and answer the question, how will you or anyone else know whether the findings are relevant? Validity is a strength of ID qualitative research (Ritchie et al., 2014; Thorne, 2016). Validity in this research is illustrated in the audit trail, which consisted of the detailed description of the State uplift phenomenon and the participant interpretations, supported by data in rich and authentic detail and in ways that reflected the language and meanings found (Thomson, 2014).

Data collection and analysis must make sense of copious amounts of data. Merriam (1998) cautioned researchers to make data analysis and data collection a concurrent activity, to avoid the risk of redundant, unfocused, and overwhelming data. Record-keeping at every stage enabled writing the methods sections for this research.

Each qualitative researcher brings a unique and intriguing perspective to their study. Confirmability relates to how others can confirm the research findings. I used the data collection

methods described in Section 3.1– primary data - participants' interviews and my field notes, and secondary data the literature review. I analysed the data collection and analysis through a reflective audit trail to identify any bias. By analysing the participants' multiple perspectives and contextual experiences, in line with other research and the human rights conceptual framework defined in Chapter 4, I was able to confirm each theme.

Participants checked their interview transcripts to validate what they had said and by my use of multiple data sources to cross-verify findings. The Discussion chapter enables further validation though analysing the interview findings alongside the existing literature. Research findings were checked against the research questions.

Demonstrating quality in the research process and the data collected is essential for all research paradigms. Qualitative research does not use the exact same criteria as the scientific paradigm or quantitative science (Kuhn, 1972). Creswell (2013) claims that procedures to assess rigour within quantitative studies (validity and reliability) are largely inappropriate for qualitative research, but her comments do not suggest that qualitative researchers are unconcerned with data quality. In a *British Medical Journal* article, Mays and Pope (2000) stated that validity and reliability "need to be operationalised differently to take into account the distinctive goals of qualitative research" (Mays & Pope, 2000, p. 50).

As a researcher, I considered the trustworthiness issues in the quality of the data collected, including credibility, dependability, confirmability, and transferability. These principles, introduced and developed by Lincoln and Guba (1985) in the 1980s, are instrumental in describing the rigour within qualitative research.

For the results of qualitative research to be credible, it is of utmost importance to ensure that the researcher presents a truthful representation of the participants' voices and experiences. In quantitative research, these individual perspectives are seen to be subjective. In contrast, individual perspectives are sought in qualitative research as they add "extra dimensions and colours to enrich the corpus of findings" (Leung, 2015, p. 324). Participant transcript-checking validates their

individual research participation, and when I read all the participants' transcripts, I found similar experiences even where the participants did not know each other.

Transferability in this qualitative research is identified in the description of the research context, which compares the State uplift practice of a newborn baby in a hospital with the baby born in a hospital to parents who can take their baby home and linking into the experience of adopted people or people growing up in State care.

Dependability was meticulously ensured in this research by applying a process approved by the AUT Ethics Committee to capture and analyse all participant data. All the interviews were conducted face-to-face. When COVID-19 lockdowns occurred, this process was flexible enough to allow me to stay connected with the participants and to get them to check their transcripts through email and Zoom meetings.

Chapter 4: Conceptual Framework

After identifying the research design and the methods used, in the previous two chapters, this chapter outlines the human rights conceptual framework employed in this research. The conceptual framework informs "the context in which we are operating" (Thorne et al., 2016, p. 2). A human rights lens helped limit the data search and collection scope by focusing on specific variables, such as child's rights, literature, theory, and public servants' perspectives, and targeted the analysis and secondary data interpretation (Labaree, 2016; McGregor, 2018; Ravitch & Riggan, 2017; Swanson, 2013). The conceptual framework was also useful for defining the research question, the interview questions posed to participants, organising research design and implementation; and framing conclusions (Berman, 2013; Casanave &Li, 2015; Leshem & Trafford, 2007; Thorne, 2016).

The international human rights framework, especially the *United Nations Convention on Rights of the Child 1989* (UNCRC, 1989) and Aotearoa New Zealand human rights agreement encapsulated in Te Tiriti o Te Waitangi 1840, and child and family ecosystem models, described in this chapter, support the child living with kin, as opposed to removal from kin with the uplift practice (Bronfenbrenner, 1979; Durie, 1982, 1999; King et al., 2018; Pere, 1997). However, these ideas of 'modern' human rights have developed over time and both the origin and examples of people with limited, or an absence, of human rights are also described. This chapter provides the human rights and historical background to the modern context of the State uplift practice described in Chapter 5.

4.1 Defining human rights

The Office of the United Nations High Commissioner for Human Rights (OHCHR) provides the following human rights definition.

> Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, colour, religion, language, or any other status. They range from

> the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty. (OHCHR, 2021, 2024, para. 1)

However, for citizens to have their human rights respected and upheld in a country, their government (State) needs to first support international and domestic human rights agreements and then incorporate these into domestic legislation to keep government and other duty-bearers accountable for breaches.

4.2 Origins of written human rights

The modern United Nations (UN) human rights agreements, ratified by New Zealand since World War 2, have their roots in Western philosophy. The first Western written human rights charter is attributed to the Cyrus Cylinder, excavated in Babylon in 1879 by the British Museum (BM) and owned by it ever since (Finkel, 2013; BM, 2022). This clay cylinder retells King Cyrus of Anshan's conquest of Babylon in 539 BCE, freeing the enslaved Babylonians and Jews (BM, 1890, 2022; George, 2007). The Cyrus Charter influenced later human rights constitutions and is permanently displayed at the UN Headquarters in New York (UN, 2021). Although Cyrus was a benevolent leader, his intervention in another state could still be considered colonisation (Wright, 2012, 2017).

However, it **i**s crucial to challenge the Western-centric view of human rights development and acknowledge the contributions of many ancient non-Western societies, as evidenced in Buddhist, Confucian, Hindu, Islamic, Jewish and Māori teachings and those of other Indigenous peoples (Abtahi, 2007; Jones, 2012; Mende, 2021; Mikaere, 2007; Sen, 2003, 2006, 2016). The lack of recognition of these contributions is comparable to the Ancient Greeks not recognising the Babylonians and Phoenicians as Jewish, or the European 19th-century archaeologists failing to recognise the African origins of Ancient Egyptians and the European colonial myth that still exists that the Middle Eastern Jesus Christ was white-skinned (Blum & Harvey, 2012; Swartwood House, 2020; Whitaker, 2018).

4.3 Early Western views on women and children

The colonisation of Māori and the establishment of a Pākehā (NZ European) colonial government, which practised State uplifts, were profoundly shaped by various Western ideas. Ideas such as the great chain of being, the doctrine of discovery, social Darwinism, and eugenics carried significant historical weight and were instrumental in shaping the societal structures of New Zealand (Durie, 1998; Miller & Ruru, 2009; Mutu, 2019; Salmond, 2021). These ideas, with their concepts of 'them' (inferior) and 'us' (superior) spread with each wave of European arrival, including early explorers, whalers, sealers, missionaries, and the larger settler population from 1840 onwards (Belich, 1996, 2001; Ministry for Culture & Heritage [MCH], 2016; Salmond, 1997).

Aristotle's *Politics* (350 B.C.E.) encapsulated the collective principle of what was good for the individual as intertwined with what was good for their community. This idea, influenced by early ideas of democracy and human rights, was a product of a society which did not include equality for women and enslaved people. Ethics and politics are intertwined with Aristotle's belief in the inferiority of women, that "between the sexes, the male is by nature superior and the female inferior, the male ruler and the female subject" (Aristotle, *Politics*, 350 B.C.E./1984, Sec. 1. 1254b). Anthropologist Salmond (2021) describes this ancient hierarchy, conceived by Plato and Aristotle and reinforced in Christian Old Testament writings, as the 'great chain of being'.

> The world was framed as a cosmic hierarchy, with God at the top, followed by archangels and angels, a divine monarch, the 'civilised' ranks of the aristocracy, and commoners, with men over women, descending to 'barbarians' and 'savages,' sentient and non-sentient animals, insects, plants, animals, and rocks. All forms of life lower down the Chain were expected to offer up obedience and tribute to those higher up. (Salmond, 2021, p. 1)

Freeman (1994) discusses that in the Old Testament, the Ten Commandments, originally from the Jewish faith, focus on "Honour thy father and mother" but there is nothing in this list about parents' obligations to honour or treat their children with love and respect.

The position of women and children in English law, and under British colonisation, was derived from Greek philosophy and from Roman law and Christianity, where women and children were chattels, as were slaves. Upon reaching adulthood and marriage, young women changed from being their father's property to being their husband's property (Consedine & Consedine, 2005; Mikaere, 1994; Montgomery, 1998).

The rights work of Enlightenment philosophers John Locke, Immanuel Kant and others did not promote universal equal rights for women, enslaved people, minority groups or children (Ishay, 2008; Kleingold, 2019). According to Nobel Prize economist Amartya Sen (1999), even the idea of democracy, developed in Greece two millennia ago, was based on exclusion and only became more inclusive over time.

> It was not till the twentieth century, however, that the idea of democracy became established as the "normal" form of government to which any nation is entitled… and that franchise for all "adults" must mean all–not just men but also women. (Sen, 1999, p. 3)

4.3.1 Ideology supporting colonisation and human rights breaches

The international legal principle commonly called the 'doctrine of discovery' provided the justification for Britain's colonisation of Aotearoa New Zealand and other New World colonies by Europeans and European Christians (Jackson, 2012; Miller & Ruru, 2009; Mutu, 2019; Wilkinson, 2020). This doctrine, correctly named the *Papal Bull Inter Caetera* and issued by Pope Alexander VI on 4 May 1493, gave permission for any land not inhabited by Christians to be discovered, claimed, and exploited by Christian rulers. Legal scholars, Robert Miller and Jacinta Ruru (2009), summarise how this doctrine justified the colonialisation of lands already occupied by Indigeneous peoples.

> This legal principle was created and justified by religious, racial, and ethnocentric ideas of European and Christian superiority over the other cultures, religions, and races of the world… and provided that newly arrived Europeans automatically acquired property rights in native lands and gained sovereign, political, and commercial rights over the inhabitants without their knowledge or consent. (Miller & Ruru, 2009, p. 2)

Although Henry VIII separated from the Catholic Church through the Act of Supremacy 1534, and created his own Church of England, he, and his descendants, still applied the doctrine in Britain's colonisation. A key example is Britain colonising Australia on the 7th of February 1788, by declaring the entire land *terra nullius* (Latin for 'nobody's land'), even though the British government was aware that Aboriginal peoples occupied the land (Buchan, & Heath, 2006). It was not until November 1992, in the *Mabo and Others v State of Queensland (No 2)* judgement that the High Court overturned the "doctrine of terra nullius" and recognised that Aboriginal peoples did not cede their territory (Ritter, 1996, p. 5). In 2014, the Waitangi Tribunal declared that Māori also did not cede sovereignty through the signing of Te Tiriti o Waitangi (WT, 2014, para. 2).

In 2023, the Vatican, in response to Indigenous peoples' requests, apologised for European powers using "the' Doctrine of Discovery' as the basis for colonisation….to justify immoral acts against Indigenous peoples that were carried out, at times, without opposition from ecclesiastical authorities" (Vatican Holy See Press Office [Vatican], 2023, p. 1).

European explorers raised during the Age of Enlightenment (1700s - 1815) looked to expand their rulers' empires using reason, individualism, science, and force as justifications (WT, 2014). Other historians have argued that commerce, Christianity, and colonisation were the methods used (Kenway et al., 2017; Ranger, 2006; Sorrenson, 2014).

With each expedition, ideas of colonisation spread widely leading to a Western racial hierarchy where linking whiteness of skin to intelligence became a "device of colonial domination" (Fanon, cited in Bonnett, 2000, p. 42). Ideas of racial purity in colonial North America, which supported a racial hierarchy (taxonomy), with African slaves at the bottom and Indigenous peoples at lower levels, informed laws, policies and practices. Those beliefs were studied and put into practice in Nazi Germany with Jews at the bottom (Whitman, 2017; Wilkerson, 2020).

Social Darwinism and scientific racism include eugenics theory, developed by Charles Darwin's cousin, Francis Galton (1822–1911), in *Inquiries into Human Faculty and Its Development* (Galton, 1883, p. 307). Galton's belief that strengthening the human species, by selectively mating

people with specific desirable hereditary traits and breeding out undesirable traits, was based on the values of the British upper class and their access to hereditary power (Selden, 2005).

Galton's theory was not original. In *The Republic*, Plato (374 BCE) wrote about the State being involved in selective breeding of who should reproduce and who should not. Plato also raised the idea of newborn babies being separated from their mothers. In an approach similar to closed adoption, with the State "taking the greatest possible care that no mother recognises her own child" (Plato, 375 BCE, 2007, Book V, p. 191).

Plato believed that children with disabilities being placed in institutions, out of sight of the family and community.

> The proper officers will take the offspring of the good parents to the pen or fold, and there they will deposit them with certain nurses who dwell in a separate quarter; but the offspring of the inferior, or of the better when they chance to be deformed, will be put away in some mysterious, unknown place, as they should be. (Plato, Book V, p. 191)

Galton expanded on Plato's idea of domestic family separation and promoted the practice of exporting people, seen as degenerates, and of exporting 'quality' people to colonise and breed out locals. These ideas were the basis for Britain exporting thousands of people considered criminals and less desirable to their colonies in North America and Australia (Davidson et al., 2001).

Social Darwinism also informed colonisation and early discriminatory legislation and practices in Aotearoa New Zealand. The attitude of the colonial Pākehā government and settler society was that Māori were a dying race and did not need access to the services that Pākehā settlers needed, nor did they need their land (Pool, 2015; Stafford & Williams, 2006). In the words of Wellington surgeon Isaac Earl Featherston (1846), who later became a member of the (then) New Zealand House of Representatives and had a main Wellington street named after him, Māori were "a barbarous and coloured race [who] must inevitably die out by mere contact with the civilised white, our business therefore, and all we can do is to smooth the pillow of the dying Māori race" (Durie, 1998, pp. 29-30).

Galton's family and twin studies, *English Men of Science: Their Nature and Nurture* (1874), supported the idea of nature over nurture. This theory informed the deficit-thinking approach to intergenerational families affected by State interventions, such as uplifts of Indigenous and poor children and closed adoptions, which removed children from less desirable kin to place them with superior non-kin (Griffith, 1996; Iwanek, 2017). Western classification of Indigenous peoples as savages informed Western parenting and childcare, resulting in generations of Indigenous children in Aotearoa New Zealand, Australia and Canada being forcibly uplifted from kin whom the State had been judged as deficient parents (Williams, 2012).

In *Orientalism* (1978), post-colonial theorist Edward Said describes the Western colonial process as a discourse about *the other*, which is supported by "institutions, vocabulary, scholarship, imagery, doctrines, even colonial bureaucracies and colonial styles" (Said, 2018, p. 2). Othering is part of the deficit thinking racial discourse, a deeply rooted narrative originating in the 1600s, about Indigenous people and people of colour being inferior in all ways, and is "strongly interconnected to, colonial economic interests" (Menchaca, 1997, p. 13; Valencia, 1997). Patton and Museus (2019) described deficit thinking in action as "pervasive and often implicit" involving a blame-the-victim mentality and operating in large oppressive systems that reinforce the hegemonic status quo (p. 123). These authors identify that the outcome of this systemic racism and discrimination is oppression of minority individuals and communities and systems resulting in inequalities with the European population, including restriction of their access to all resources available (Menchaca, 1997; Patton & Museus, 2019; Valencia, 1997).

Eugenic ideas and models influenced New Zealand government discussions, legislation, and society in the late nineteenth and early twentieth centuries (Spencer, 2018; Thomas, 2005; Wanhalla, 2001). From the late nineteenth century, immigration legislation that discriminated against Chinese immigrants (Chinese Immigrants Act, 1881) expanded to restrict "cripples, idiots, lunatics, infirm, blind, deaf and dumb" (Imbecile Passengers Act, 1882) and the "idiotic", the "insane" and the contagious (Immigration Restriction Act, 1899) (Disability Support Services, 2025).

Dr. Truby King, founder of New Zealand's Plunket Society and first State Child Welfare Manager, believed in the State institutionalising 'mental defectives,'(Mental Defectives Amendment Act, 1928) including children for misbehaviour, as 'weak links' in the 'white' human race (Olssen, 1981; Paul, 2018). Eugenic sterilisation was proposed to stop certain people and families from reproducing but was rejected in the New Zealand Mental Defectives Amendment Act 1928. In Wellington, French-born Catholic Home of Compassion nun Suzanne Aubert and St Helen's maternity hospital's chief medical officer, Dr Agnes Bennett, were among the few to speak out against eugenics and King's attitudes to the mentally or physically disabled (Manson, 1960; Munro, 1997; Stace, 1998).

In Appendix E, some of the legislation and reports, from 1919 to 2024 around people in State Care, including the Mental Defectives Amendment Act 1928, are identified in a timeline.

4.3.2 Ideology supporting the control of women and children

Patriarchal attitudes, developed over time, informed male views of women and children as being 'lesser' beings and allowed men to control mothering, women's sexuality, and reproduction rights and to use violence against women and children (Bergman, 2002; Human Rights Monitor, 2001). Racist views, based on social Darwinism, bolstered notions of European superiority in a land where these mainly male settlers were foreign, a minority, and without family, and who came to get rich by exploiting the local people and resources (Belich, 2011). Whalers, sealers, and settlers traded goods for sexual access to Māori women (Belich, 1996; Jordan, 2010; Mikaere, 1994). Later in the 1860s land wars, Crown soldiers and settlers used sexual violence and rape upon Māori women in Taranaki, Waikato and the East Coast regions (Wanhalla, 2011).

The role of evangelical Christianity, introduced to New Zealand by Samuel Marsden and the London Church Missionary Society in 1814, was pivotal in shaping colonial attitudes towards women and children, particularly in the context of sexual violence, including rape (Cozens, 2015). These early settlers were surprised to see how Māori men, women and children interacted differently from accepted English practice.

> According to early European observers - Samuel Marsden, Richard Taylor, Joel Polack and many others, Māori men cared tenderly for their children, taking them to formal gatherings where chiefly children asked questions and were answered by the elders. In quote after quote, these observers note with surprise that Māori women and children were not struck by their menfolk. (Salmond, 2018, p. 4)

The missionaries disapproved of the apparent status of Māori women within the tribe and of Māori community upholding of gender balance, where men and women cared collectively for children enabling women to have leadership roles (Mikaere, 2005). Historian Angela Wanhella's (2022) submission to the Waitangi Tribunal's *Mana Wāhine Kaupapa Inquiry (*WT, 2020; *WAI 2700)* describes the status of Māori women pre and post colonisation.

> Pre-1840 Māori women were navigators, gardeners, diplomats, war leaders, military strategists, managed land and were makers of material wealth. They held political, economic and cultural authority derived from their whakapapa and from their actions. In the post-1840 world Māori women wrote letters, sent petitions, and testified before government commissions. The very act of doing so was an expression of their authority and leadership. (Wanhella, 2022, pp. 19-20)

Māori women's status as organisers and leaders eroded as Christianity and British values started to influence traditional Māori practices and beliefs (Binney, 1995; Forster et al., 2015; Mikaere, 1994, 2003; Wanhella, 2022). Although Māori women owned land and could do business, Crown representatives negotiating Te Tiriti o Waitangi, and later land deals would only negotiate with Māori men, as would male settlers (Hohepa & Williams, 1996; Mikaere, 2005).

Wanhalla (2022) states that there were "only 13 female signatories to Te Tiriti o Waitangi" (Wanhalla, 2022, p. 3). In 2022, several *WAI 2700* claimants said their female ancestors were denied Te Tiriti signing rights by Crown representatives (Evans, 2021; Harris, 2021; Ngata, 2022). These claimants, and other claimants of 165 claims filed, alleged prejudice against wāhine Māori (Māori women) arising from colonisation, historical (pre-September 1992) and contemporary Crown

breaches of Te Tiriti. The joint claims describe many areas of government that has disadvantaged wāhine Māori, including employment, leadership, family and sexual violence, the justice and welfare systems, health, housing, and education, including the State practice of removing Māori babies and children (WT, 2023, WAI 2700).

WAI 2700 is informed by much research, including the *Puao-te-ata-tu* report (1988), which identified racism in Social Welfare (Oranga Tamariki's predecessor) and that this State racism led to intergenerational breakdown in Māori families.

> The history of New Zealand since colonisation has been the history of institutional decisions being made for, rather than by, Māori people. Key decisions on education, justice, and social welfare, for example, have been made with little consultation with Māori people. Throughout colonial history, inappropriate structures and Pākehā involvement in issues critical for Māori have worked to break down traditional Māori society by weakening its base-the whānau, the hapū, the iwi. It has been almost impossible for Māori to maintain tribal responsibility for their own people. (MAC, 1988. *Puao-te-ata-tu*, p. 18)

New Zealand Pākehā society, like many British colonies was created by Caucasian men for Caucasian men. By 1839, the total settler population was about 2,000, with 90% being single British males (Belich, 1996). Historian Judith Bassett (1990) describes the colonial settler male workforce as "semi-settled" (p. 262). Married men often left their wives and children on small rural landholdings, for lengthy periods, while they went away in search of work on farms, including shearing or public works (Bassett, 1990).

In New Zealand, males exceeded the female population until 1971, fostering a dominant 'bloke' or 'mate' culture around pubs, clubs and sports fields (Callister & Didham, 2012; King, 1988; Phillips, 1996). Enhancing this male culture was military service, introduced in 1845 to fight Māori, with compulsory military training continuing until 1972 (McLintock, 1966). However, in the 1970s, the women's movement, with its significant impact, began challenging these male-only spaces (Coney, 1995).

Connell (1995) argues that hegemonic masculinity creates toxic masculinity, fostering male domination, homophobia and sexism (Kaulback, 2020). Research on countries with a high prevalence of violence against women, analysed World Health Organization, World Bank and UN data to find that colonised countries with patriarchal systems are ”50 times more likely” to have violence against women (Mannell, 2022, p. 1).

In colonial New Zealand, ideas from imported Christianity and English common law promoted that women were the property of men and rape within marriage was not a crime until 1985 (Newbold, 2011 Swarbrick, 2018). Intimate partner violence (IPV) continues to be a legacy practice with New Zealand Crime and Safety Survey data collected between 2018 and 2020/21, showing that 23% of women had experience violence from their partner (MoJ, 2022, p. 2). New Zealand research involving 1,464 women shows that women, and especially mothers, who face IPV need greater support from public health and community services (Mellar et al., 2023).

King’s Plunket Society, established in 1907, served as a significant tool of patriarchy and colonisation. However, in 2020, the organization issued an apology for the harm caused by its past practices (Whānau Āwhina Plunket, 2020). King was known as "an early proponent of enforcement parenting - with its emphasis on discipline and detachment" (*BBC*, 2013, para. 6). Trained and uniformed Plunket nurses visited homes, checking that mothers kept to King’s recommended strict baby feeding, toileting, bathing, sleeping and cleaning schedules, as described in his 1910 ‘scientific’ *Feeding and Care of Baby* or the later *Mothercraft* (1934) guidelines (Clendon & McBride-Henry, 2014). With King’s scientific method, mothers were encouraged to leave babies alone as much as possible between the four-hourly feeds and not pick them up if they cried. If babies were not thriving or had colic, they might be removed from their mothers for weeks or months to Karitane hospitals, where experts looked after them, and the mother was often considered ‘deficient’ and ‘incompetent’ (Kedgley, 1996). King also developed the Karitane baby formula which promoted, without evidence, that it was as good as breast milk (Bartle, 2005).

Despite advocating for his nurses to be trained in his method, King opposed the idea of high schools or tertiary education for women (Manson, 1960). Dr Agnes Bennett, Wellington's St Helens maternity hospital's Chief Medical Officer from 1908 to 1936, described King as "the greatest obstacle to women's progress and emancipation that New Zealand has known" (Manson, 1960, p. 69).

Historians James Belich (2001) and Linda Bryder (2001) provide evidence of Plunket's neglect of Māori mothers and children in Aotearoa New Zealand during the early and mid-20th century. Despite this neglect, Māori mothers showed remarkable resilience in the face of prevalent eugenic beliefs and racial prejudices, which led to a lack of services for Māori families and inadequate record-keeping of Māori infant mortality rates. As a young medical student in 1961, Sir Mason Durie highlighted institutional policies that prohibited Plunket nurses from visiting Māori mothers in specific areas, reflecting the systemic discriminatory practices within the organisation (Bryder, 2001).

A 2021 review of the Well Child Tamariki Ora health programme found that whānau using Tamariki Ora providers were more positive about their service experience than whānau using the largest provider, Plunket, and exposed Plunket's failure to address the needs of Māori, Pacific, disabled, and high-needs children (MoH, 2020; *Radio New Zealand [RNZ],* 2021). Subsequent research in 2024 identified that new mothers had a fear of judgment by Plunket nurses if they asked for help and felt there was "a lack of openness and relationality between nurses and families, and by a sense that mothers themselves are instrumental to the well-being of babies rather than valued in their own right" (Clapham et al., 2024, p. 8).

Moreover, Plunket's substantial historical control over mothers, actively discouraging them from seeking advice from their extended family and promoting a rigid approach to parenting (Kedgley, 1996), continued to impact maternal experiences in Aotearoa New Zealand. However, a positive shift emerged in the 1970s and 1980s, as mothers gained access to alternative parenting approaches emphasizing spontaneity, warmth, and emotional connection (Spock, 1946; Winnicott, 1971). The persistent historical legacy of maternal judgement was evident in a 2006 study of 40 New

Zealand mothers, underscoring the enduring impact of past practices on maternal well-being and caregiving experiences.

> Society still judges mothers whether they stay home or do paid work and expects them to do both but makes them feel guilty for choosing one or the other. This is supported by quantitative findings that New Zealanders are almost evenly split on whether mothers of pre-school children should be in paid work at all. (McPherson, 2006, p. 5)

4.3.3 Mothers denied the right to parent - adoption

The earliest research on separating mothers and babies is related to removing babies from mothers for adoption (Blake, 2013; Else, 1991; Griffith, 1996; Haenga-Collins, 2011; Iwanek, 1997; Newman, 2013, Paton, 1954, 1968; Rockel & Ryburn, 1988; Shawyer, 1979; West, 2012). Understanding closed adoption in Aotearoa New Zealand is crucial to understanding the State's interventions concerning Oranga Tamariki uplifting babies and children from kin. Many closed (non-kin contact) adoptions that occurred in the 1950s to 1970s are now considered to have been forced adoptions, with the baby removed by hospital or child welfare staff from the mother shortly after the birth. The mother received no support or opportunity to breastfeed or mother their child, no access to independent legal support, and no information about who cared for the baby and where they lived (Else, 1991; Griffith, 1997; Iwanek, 2018; Palmer, 1991; Rockel & Ryburn, 1988; Shawyer, 1979). This history underscores the urgent need for awareness, reflection, and potential policy changes regarding adoption and child welfare.

Ferguson (2004) states that the British child protection practice began in the populous slums and poverty-stricken cities in England in the late nineteenth century. As a British colony until 1907, Aotearoa New Zealand followed British ideas (Martin, 2022; MCH, 2020; Mutu, 2019b; Newman, 2020a) for looking after children which predominantly affected European children until applied to Māori, especially after their rapid urbanisation following World War II. By 1970, 70% of Māori lived in towns and cities (Te Uepū Hāpai i te Ora, 2019, p. 23) and for the first time many Pākehā New

Zealanders were no longer able to keep Māori 'out of sight' and therefore 'out of mind'. This period saw Māori overly scrutinised and overly monitored by police (Haenga-Collins, 2017; Stanley, 2016).

The Destitute Persons Relief Ordinance 1846 was Aotearoa New Zealand's earliest child welfare legislation, and it required families in the broadest sense to take responsibility for their children (Tennant, 2007). The State took control from the family after the Neglected and Criminal Children Act was passed in 1867. A move was introduced to place some children in newly developed institutions and foster care with non-kin caregivers (Baker & Du Plessis, 2011; Newman, 2020a, 2020b; Worrall, 2016). The concept of foster care dates to the seventeenth century, when the London Foundling Hospital's foster programme was developed to "evoke a nurturing alternative to orphanages" (Rymph, 2018, p. 177). In-home foster care was also considered cheaper than the State or charity institutional option (Griffith, 1997; Pollock, 2018).

By 1916, 40% of children in State care in Aotearoa New Zealand lived with non-kin foster parents (Worrall, 2016). Fostering and adopting children aged ten years and over was more popular than babies, a benefit being the extra child-labour in large households or on farms (Griffith, 1996; Iwanek, 2017).

Single mothers without a partner were seen as inadequate parents and were actively encouraged to adopt their children to be raised by two 'decent' parents (Iwanek, 2017; Shawyer, 1979). Higgins (2011) describes a similar position in Australia that lasted until the early 1970s.

> Unwed [single] women who were pregnant were encouraged—or forced—to "relinquish" their babies for adoption. The shame and silence that surrounded pregnancy out of wedlock meant that these women were seen as "unfit" mothers. (Higgins, 2011, p. 57)

Although most Pākehā settlers lived in nuclear families, until the 1890s, a form of informal open adoption existed with the birth mother sometimes living with the 'adoptive family', who was often a family member (Griffith, 1998; Newman, 2020a). From the late 1850s, colonial churches took control of this informal adoption by introducing orphanages (Dalley, 1998; Pollock, 2011) and, with

the State legislators' support, promoted adoption to non-kin as the best outcome for the babies and children in their care.

> Aotearoa New Zealand's [adoption] legislation, like many Western countries, focused on the caregivers of orphaned, deserted, and neglected children in order to encourage more people to adopt so that the children would cease to be a community responsibility and a drain on public funds. (Ludbrook, 1990. p. 1)

The Adoption Act 1881 gave adopted parents legal control over the adopted children in their care, and recognised whāngai (Keane, 2011; Newman, 2020a). Under Native Land Act 1909, the customary practice of whāngai was no longer recognised in law. Instead, Māori had to adopt through the Native Land Court (McRae Okeroa, & Nikora Waimarie, 2006). With the Adoption Act of 1955, adoption was formalised further and changed to break birth connections making them secret, for Māori it was a loss of whakapapa (Ahuriri-Driscoll, Blake., et al., 2023; Potter & Blake, 2013; Else & Haenga-Collins, 2023; Haenga-Collins, 2011; Newman, 2013, Rockel & Ryburn, 1988; Shawyer, 1979; West, 2012). This Act resulted in more non-kin adopting of babies, where adopting parents did not legally have to acknowledge the birth identity and origins of their adopted child, so legal secrecy or a 'clean break' around that birth relationship occurred where the information had been previously available (Carp, 2008, 2011; Griffith, 1997; Iwanek, 2018; Ludbrook, 1990, 2019).

The Adoption Act of 1955 also allows the legal transfer of the child from its biological parents to the adoptive parents (MoJ, 2022).

> The adopted child shall be deemed to become the child of the adoptive parent, and the adoptive parent shall be deemed to become the parent of the child, as if the child had been born to that parent in lawful wedlock and…the adopted child shall be deemed to cease to be the child of his existing parents. (Adoption Act, 1955, s16 (2) a, b)

This, still current legislation, supports a 'clean break' by creating a new birth certificate for the child with the names of the adoptive parents replacing the birth parents. This Act creates "a legal fiction" (Moody, 2008, p. 1), while simultaneously "causing harm to family biological ties and

whānau whakapapa and dismisses the whāngai practice. It's a strange world when an act of Parliament can cut off your biological and genetic heritage" (Ludbrook, 2019, cited in Manson, 2019, para. 17).

Since the 1970s, and as a 'workaround' to the outdated Adoption Act 1955 by recognising the child's right to their birth identity and kin, Child, Youth and Family, and now Oranga Tamariki, practice open adoption where birth parents can choose the adoptive parents with the idea they remain in lifelong contact. However, this arrangement is not legally binding, and the Adoption Act grants the legal responsibility to the adoptive parents, and the child is still given a new 'second birth certificate with the adoptive parents as their only kin. Adoption reformer, Keith Griffiths describes the situation.

> It is worth emphasising …that there are no legal differences between open and closed adoptions. Children who are part of an open adoption are in every legal sense the children of their adoptive parents, just as they are in a closed adoption. Open adoption is solely a voluntary agreement founded on good will between two sets of parents.
>
> (Griffiths, 1997, p. 277)

In 2025, Adoption Action, a long-standing lobby group for New Zealand child care and protection legislation reform, including implementing the Law Commission's recommendations (NZLC, 2000) and international human rights treaties, have documented the many attempts to get this Act overturned since 1977 (Adoption Action, 2025). More recently, between 2021 and 2023, the Adoption Act 1955 was reviewed by the Ministry of Justice when the work was "paused" by a new Government, "in order to progress key Government priorities in the Justice portfolio." (MoJ, 2023, para 5). Following a National Iwi Chairs Forum Pou Tikanga-led wānanga on whāngai in August 2022, the feedback to the Ministry of Justice was "that further work on whāngai should be separate to adoption reform and led by Māori. The Ministry therefore is not progressing work to provide specific legal recognition of whāngai at present." (MoJ, 2023, para. 10). Nor any work on the outdated Adoption Act which is 70 years old in 2025.

Non-kin care is part of the adoption history. Newborn babies identified for adoption were separated from their mothers, after the hospital birth, and were often placed in transit foster houses until an adoptive family was available (Newman, 2020b). Until the 1970s, fostering was an acceptable extension of a woman's traditional role in society, where women could not typically work outside the home for payment. The State welfare agency paid families, many impoverished, to look after a neglected child or children, so this child or children became a source of income for the foster parents. This income was often paid by the biological mother, who was more often a single woman, and the mother's access to the child could depend on the payments being made and always at the discretion of the foster parents (Else, 1991; Iwanek, 2017; Thompson, 1984; Worrall, 2016).

In comparison, modern foster parenting in Aotearoa New Zealand is still not well paid, with the Foster Care Allowance (April 2024) being $286 a week for caring for a child aged 0 to 4 years and $332.61 a week for a young person 14 years and older (OT, 2023b). Those rates are an increase from previous years. In the Oranga Tamariki *Review of financial assistance for caregivers'* report, "84% of caregivers use their own money to meet the needs of children" (OT, 2020, p. 5). In the same report, foster parents raised the idea of foster work being recognised and paid as a full-time job.

Many non-kin foster parents have multiple foster children in their care, and this can include fostering siblings, as well as biological children; in April 2020, there were 2,750 caregivers for 5,000 children in State foster care (OT, 2020, p. 12). However, the information was not given on whether there were also biological children in the home.

In the same Oranga Tamariki report, kin caregivers are most likely to be Māori and Pacific and more in need of extra financial assistance than some other caregivers, as they may have to give up a paid job or be already struggling financially before taking on extra kin. The greater the well-being needs of the child in their care potentially results in more costs and more stress for kin, which in turn impacts what they need from Oranga Tamariki who often cannot provide financial help or other support to make things easier for kin (OT, 2020, pp. 42-44). The Waitangi Tribunal's report into the Hastings case, *He Pāharakeke, He Rito Whakakīkinga Whāruarua* (2021), noted that $800 million

of the total $1.1 billion funding for child "statutory intervention and transition" was allocated "without any reference to Māori" (WT, 2021, p. 243). This State funding is significant because more Māori children are in State care than non-Māori children (OCC, 2020a). Yet in 2019-2020, Turuki Health Care was the only Māori foster care provider funded in position 10 of the top 10 funded providers (WT, 2021, p. 244).

The impacts on children removed from kin and placed with non-kin, via adoption, in Aotearoa New Zealand, are significant. Between 1940 and 1990, the adoption of over 103,000 babies occurred domestically (Griffiths, 1996). From 1955 to 1985, an estimated 45,000 non-kin adoptions occurred (Griffiths, 1996; Haenga-Collins & Gibbs, 2015). For Māori children adopted by Pākehā, that practice often denied the children their cultural and whānau identity (Haenga-Collins, 2017, 2019). Although the child protection data is patchy (Cook, 2020; Griffiths, 1996), some historians have identified that children born to unmarried Pākehā mothers and Māori fathers were most likely adopted into Pākehā families as a form of assimilation (Else, 1991; Haenga-Collins, 2011, 2017). State child welfare agencies and the courts often prevented Māori kin from fostering or adopting Māori children (Haenga-Collins, 2017; Savage et al., 2021).

Pregnant single Pākehā women commonly lived in church and State institutions, away from kin, with their families often explaining their absence by saying they had *'*gone up country' or 'to stay with relatives.' Institutions and health professionals emphasised that the mother could return to her life after adoption as if nothing had happened. This 'clean break' approach supported the early separation of mother and child because the adoptive *nurture* environment would shape the adoptee's life from their natural origins or *nature* (developed by the founder of eugenics theory, Francis Galton in 1874). Adoption historian E. Wayne Carp (1998) described the *'clean break'* as a concept where "birth mothers feel no emotions about the children they relinquished for adoption" as a myth (p. 209).

The clean break belief and secrecy shaped Aotearoa New Zealand's adoption legislation and social work practice from 1955 (Griffith, 1996; Iwanek, 1991; Ludbrook, 2019). Much individual and

family trauma has resulted from the separation of children and their biological mothers and kin through the secrecy of closed adoption, which has been extensively researched (Blanton & Deschner, 1990; Brodzinsky, 2008, 2022; Brodzinsky & Palacios, 2005; Carr, 2000; Else, 1991; Haenga-Collins, 2011, 2017; Griffiths, 1996; Hesseling-Green, 2015; Lifton, 1994; Logan, 1979; Palacios et al., 2019; Payton, 1955, 1968; Van der Kolk, 2015; Verrier, 1993; Winkler& van Keppel, 1984). Inquiries into the Hastings case (2019) and the practice of State uplifts, including interviews with mothers and kin illustrate a similar depth of trauma by the State intervention based on deficit thinking and discrimination (OCC, 2020a, 2020b, 2020c; ONZ [Boshier], 2020; WO, 2020; WT, 2021).

The New Zealand closed adoption practice was similar to that in Australia, where in 2013, Prime Minister Julia Gillard apologised for the thousands of forced adoptions. In Aotearoa New Zealand in 2017, then Prime Minister, Jacinda Adern, following a public petition supported an inquiry into forced adoptions (*NZ Herald*, 2018). in 2018, the Royal Commission of Inquiry into Historical Abuse in State Care and Faith-based Institutions (RCAC) included adoptions and foster placements in its terms of reference (RCAC, 2018). Following the completion of the inquiry report in July 2024, a State apology was given to survivors of State care abuse by both Prime Minister Luxton and the heads of relevant State agencies on November 12, 2024 (Crown Response to the Abuse in State Care Inquiry, 2024). However, it is important to note that of the three senior public servants most involved, one responsible for the increase of Māori babies uplifted into State care from 2018 to 2021 and two of using legal and bureaucratic processes for over fifteen years to minimise and prevent survivor abuse complaint settlements did not participate in the apology. In 2021, the Chief Executive of Oranga Tamariki 'stepped down' in 2021 to take up another newly created public service chief executive role (RNZ, 2021) and the other two retired, one a month before the apology. This perception of senior public servants, most involved, being spared taking the responsibility consequences for their actions or inactions, or the actions or inactions of their staff, is highlighted later in participant interviews and in secondary research.

As part of the Parliamentary apology, the Prime Minister also apologised for forced adoptions.

> Some mothers were pressured or coerced by the State to give up their babies for adoption, often leading to long years of mental suffering for them and the children they were forced to give up. To all of you, I am sorry. (Luxon, 2024, November 12)

Between the 1950s and 1980s, another State intervention separating children from their birth parents resulted in over 100,000 children being removed from their families and put into State institutional care (Stanley, 2016). Occasionally, that intervention resulted in adoption (Iwanek, 2017), but generally, those children grew up in State foster care or State-run institutions (RCAC, 2020). With closed adoption and State uplift practices, the removal of Māori children from their families occurred in more significant numbers than among Pākehā children (OCC, 2020; MDC 1988). In the 1950s and 1960s a political and public fear of "moral delinquency" existed, particularly in relation to girls and especially Māori girls who were most likely to be removed from kin and placed in State care (RCAC, 2021, p. 50). Māori children in State care predominantly lived with non-kin Pākehā (Haenga-Collins, 2011, 2017).

4.4 Human rights agreements - Magna Carta, 1215 and Te Tiriti, 1840

As Aotearoa New Zealand was colonised by the British Crown, the Magna Carta (1215) and other British laws such as the Petition of Right 1627, Habeas Corpus Act 1679, Bill of Rights 1688, English Law Acts (1854, 1858) migrated into the New Zealand legal system. The *English Laws Act 1858* retrospectively enacted that all English laws as of 14 January 1840 were in force in the colony (Evans, 2010). This date is significant, as it predates Te Tiriti o Waitangi, which was signed on 6 February 1840.

The Magna Carta, like Te Tiriti, comprised several copies (Belich, 1996; Clark, 2015; Jones, 2015). It was brokered by the wealthy English senior nobility (25 barons), together with the then Catholic Archbishop of Canterbury, and legal scholar Stephen Landon (1207-1228), to protect their noble and church rights through limiting the power of the monarch King John by establishing a 'rule

of law' (UK Parliament, 2020). In 1297, the Magna Carta expanded its use to become a foundation of English law (Clark, 2015). This legal document is an example of an early social contract whereby the government (or ruler) must rule with the consent of the people and is not above the law. It also promoted the following ideas that have become mainstream in Western democracies over time: separation of powers of Church and State (broken by Henry VIII's decision to be ruler of both Church and State); rights against illegal arrests and unlawful detention (*habeas corpus*); the right to trial by a jury of one's peers; and that justice should not be sold or unnecessarily delayed, taxes should not be excessive, inherited wealth as a right, and that punishments should relate to the seriousness of the offence (Cornell Law School, 2020; Cowdery, 2015; Lerner, 2015).

Like Te Tiriti o Waitangi, the Magna Carta was ignored at times, until Chief Justice Sir Edward Coke (1552 – 1634) revived it (Baragwanath, 2008). It is telling that colonial decisions excluded the newly created Tiriti o Waitangi 1840 from legislation until 1975. The Treaty of Waitangi Act 1975 was the first legislation to recognise Te Tiriti 1840, 130 years after its signing (Treaty of Waitangi Act 1975). In 2010, philosopher Grayling described this breakable link between human rights and politics, commenting that "Governments enact human-rights provisions in good times and find them inconvenient in bad times when they are most acutely needed by everyone else" (Grayling, 2010, p. 27).

The Magna Carta 1297, the Bill of Rights 1688, and the Act of Settlement 1700 were incorporated into Aotearoa New Zealand's law via the Imperial Laws Application Act 1988 and the earlier English Laws Act 1858. These statutes have regulated "the relations between the State and the individual" since the earliest colonial days (Keith, 1990, p. 2). In the New Zealand Parliamentary Cabinet manual introduction, these three statues are "confirmed as part of the law of New Zealand by the Imperial Laws Application Act 1988" (Department of Prime Minister and Cabinet, 2023, para. 12). The same introduction also describes Te Tiriti as "a founding document of government" (para. 1).

Britain's testing ground for laws and practices breaching human rights later used in other British colonies was Ireland, as Britain's first and longest-held colony for over 700 years (Ohlmeyer, 2023). Auckland University Professor, the late, Ranganui Walker (2016) described Britain's prior colonial experience applied to Indigenous peoples.

> When Great Britain annexed New Zealand under the Treaty of Waitangi in 1840, it had considerable experience in the techniques of domination, subjugation, and domestication of Indigenous populations in North America, Canada, and Australia. (Walker, 2016, p. 1)

The Irish Rebellion 1641 and the Irish Act of Settlement 1652 influenced the New Zealand Settlements Act 1863 and the Suppression of Rebellion Act 1863 (O'Malley, 2020). From the outset, Te Tiriti o Waitangi was referred to as Aotearoa New Zealand's *Magna Carta* (Belich, 1996) and the country's most important governance document (Cooke, 1990; Elias, 1995; Ruru & Kohu-Morris, 2021).

In 2015, to commemorate the anniversaries of the Magna Carta (800 years) and Te Tiriti 1840 (175 years), Victoria University Law Professor Carwyn Jones commented on the significance of the Magna Carta to the development of human rights agreements.

> Ideas of human rights rules and equality in law had been identified in Britain in 1215 with the signing of the Magna Carta. This document was the foundation of the Bill of Rights of 1689 in Great Britain, the Declaration of the Rights of Man and the Citizen of 1789 in France, the US Bill of Rights of 1791, the Treaty of Waitangi 1840 and, more recently, the United Nations Universal Declaration of Human Rights in 1948. (Jones, 2015, p. 2)

4.5 Te Tiriti 0 Waitangi 1840 - Aotearoa New Zealand's first human rights treaty

Before European settlement, Māori societies had their core values and laws, with each hapū having its variation of tikanga Māori (Jackson, 2001; Ruru, 2017). Tikanga was reflected in Te Tiriti, as shown in Article 2, te tino rangatiratanga (self-determination, sovereignty), and Article 3, oritetanga (the right to equality before the law).

Some of the missionaries and first public servants present and involved in drafting Te Tiriti 1840 would have known ideas about human rights and equality or known about the Magna Carta 1297, the Bill of Rights 1689, the French Bill of Rights 1769, and the United States of America Bill of Rights 1791. If they had been in Northland in 1835, they would have known about He Whakaputanga o te Rangatiratanga o Nu Tireni, the Declaration of the Independence of New Zealand 1835, arguably the first domestic human rights treaty, it was the beginning of some Māori leaders identifying as representatives of Aotearoa New Zealand under the title and flag of the United Tribes (He Tohu, 2019; Mutu, 2019, 2004b; WT, 2014). It was also the first formal request by Māori for the British to control their settlers as Pākehā lawlessness was rife (Belich, 1996; WT, 2014). Te Tiriti is also described as the country's first immigration document, as it recognised the increasing numbers of European settlers and their early impact on Māori (Beaglehole, 2005; Mutu, 2023; Walker, 1995).

From 1840 on, Māori had much to protest about with the interpretations of land ownership and use applied by the Pākehā government and settlers, differing from the Māori language version of Te Tiriti resulting in the permanent alienation of many Māori from their land (Belich, 1996; Charters, 2019; Jackson, 2019; Mutu, 2010; Mikaere, 2011; Orange, 1987; WT 2014). Huygens (2016) described Māori reaction to Te Tiriti breaches starting from 1840 which included petitions to the Crown, and later the United Nations, becoming the country's "oldest continuous social movement" (p. 1).

Te Tiriti 1840 was created nearly 100 years before the United Nations Declaration of Human Rights 1948 (UNHR), yet its human rights principles remain relevant.

> The Treaty of Waitangi is New Zealand's unique statement of human rights. It includes both universal human rights and Indigenous rights. It belongs to and is a source of rights for, all New Zealanders. (Human Rights Review, 2010, p. 5)

Legal academic Bill Hastings described Te Tiriti, supported by international and domestic law interpretations, as "a catalyst in moulding a new approach to the performance of treaty obligations by all three branches of government" (Hastings, 1999, p. 661).

"Until the end of the twentieth century, Te Tiriti was virtually invisible to New Zealand law" (Palmer, 2012, p. 2). Te Tiriti can only be enforced in a court of law when a statute or an Act explicitly refers to the Treaty (MoJ, 2021). Ruru and Kohu-Morris (2021) describe Te Tiriti as occupying "a paradoxical legal position" (p. 4). Much domestic law is in breach of Te Tiriti principles. However, the ability to change this relies on mainly non-Māori politicians and public opinion, progressing this through the highest law-making authority, the mainly non-Māori Parliament, which changes every three years (Ruru & Kohu-Morris, 2021).

In 2015, Te Tiriti and human rights legal scholar Moana Jackson (2015) encapsulated the complexities of respecting Te Tiriti in the contemporary era as "To honour the Treaty, we must first address the legacy of colonisation" (Jackson, 2015, cited by Mutu, 2019a, p. 4). In the same article Margaret Mutu (2019) says that since the signing of Te Tiriti little progress has been made. "The same attitude towards Māori that British immigrants were articulating in the 1840s remains in governments to this day" and gives an example of how "the treaty claims settlement process entrenches colonisation" (p. 4).

Addressing 'the legacy of colonisation' through strength-based whānau-centred initiatives that operate with a 'kaupapa Māori' (Māori knowledge, skills, attitudes and values) approach, have resulted in successful government funded examples such as Whānau Ora (health and welfare providers), E Tū Whānau (family violence prevention) and Te Kohanga Reo (te reo Māori early childhood education). However, the ACT political party, part of a conservative three-party coalition government (National, ACT, NZ First) elected in late 2023, sought to challenge the role of Te Tiriti in modern Aotearoa New Zealand by rewriting the original Te Tiriti 1840 principles in the Treaty Principles Bill 2024. This Bill, fortunately defeated in 2025, could have significantly altered the landscape of Indigenous rights in New Zealand (Harris, 2024; Jones, 2024; Nelson, 2024).

4.5.1 Key Articles and principles of Te Tiriti 1840 relevant to State uplift

In a socially just and cohesive society informed by Te Tiriti, understanding and acknowledgement of Te Tiriti, strong domestic legislation and international human rights treaties are also required to support Māori and their right to self-determination (Humpage & Flersas, 2001).

Two Te Tiriti Articles, in particular, are relevant to the State uplift practice of removing Māori children.

Article 2 – The guarantee of 'tino rangatiratanga' *(*sovereignty and self-determination) in respect of taonga (treasures) applies to Māori children (Barrett & Connolly-Stone, 1998, Durie-Hall & Metge, 1989). Tino rangatiratanga also recognises a "for Māori, by Māori and with Māori" approach (Smith, 2015, p. 52). Van Buren (1995) describes "self-determination as the right to not only participate in decision-making but the right to have decisions followed" (p. 743).

Article 3 of Te Tiriti sets out the '*ōritetanga*'– the right to equality before the law. This right is also protected under the New Zealand Bill of Rights Act 1990 (BORA 1990) and the Human Rights Act 1993 (HRA 1993) (MoJ, 2020). Article 2: Non-discrimination clauses in the UNCRC (1989) also protect this right (Te Tiriti, 1840, Arts. 2, 3; UNCRC, 1989, Art. 2).

The Waitangi Tribunal's report *He Pāharakeke, he Rito Whakakīkinga Whāruarua (2021)* was an urgent response to two applications about Oranga Tamariki and the Hastings case in 2019 and seven applications related to Māori children taken into State care (WT, 2021; *WAI 2915*).

> The signatories to the Treaty did not envisage any role for the Crown as a parent for tamariki Māori, let alone a situation where tamariki Māori would be forcefully taken into state care - in numbers vastly disproportionate to the numbers of non-Māori children being taken into care. The overwhelming conclusion from this Inquiry is that the State care of tamariki and pēpī Māori, and in particular the uplift practices used by the State, are never appropriate for the long-term well-being of Māori. (Waitangi Tribunal, 2021, p. 179)

From 2017 – 2021, the Waitangi Tribunal noted that over 90 per cent of Māori uplifts were executed 'without notice' (WT, 2021; Rose-Curnow, 2021). Prior to 2017, the Crown "failed to meet

its Tiriti duties" (p. 106) to protect Māori tino rangatiratanga with Māori children in State care (WT, 2021, p. 109; Rose-Curnow, 2021)

Although the report recommended not to close Oranga Tamariki immediately, it also recommended that "a Māori Transition Authority be established. This body must be independent of the Crown and its departments. Its primary function is to identify the changes necessary to eliminate the need for State care of tamariki Māori" (WT, 2021, p. xvi). By May 2025, this recommendation had not been activated by the government.

4.6 Twentieth century international human rights agreements

The concept of modern human rights as universal agreements emerged after the First and Second World Wars. The League of Nations, established in 1919 as a precursor to the United Nations (UN), regulated issues related to human rights and freedoms. New Zealand was among the first countries to sign the *United Nations Charter 1945* (UNC 1945*)* and advocated for the inclusion of human rights (MFAT, 2020). By ratifying this agreement, member countries supported the creation of the United Nations (UN), and the commitment:

> … to save succeeding generations from the scourge of war … and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained. (UNC 1945, Preamble)

When the UN was founded in October 1945, a third of the world's population lived in territories controlled by colonial powers, so it was considered imperative to promote the need for freedom arising from human rights and territorial disputes (UN, 2022).

Over time, the UN has expanded the 'brotherhood' to include Indigenous peoples, women, people with disabilities, and people facing gender and sexuality discrimination - peoples not originally included in the *Universal Declaration of Human Rights 1948* (UDHR 1948). The UDHR is the founding document for subsequent human rights conventions, including the Convention on the

Rights of the Child (UNCRC, 1989). New Zealand was also an early signatory of UDHR 1948. However, over the last 50 years, this country has been slower to sign up to, and therefore to implement, other key UN human rights agreements such as:

1. Convention on the Rights of the Child 1989 (UNCRC, 1989), New Zealand signed in 1993.
2. Convention on the Elimination of All Forms of Racial Discrimination 1969 (CEFRD, 1969), New Zealand signed in 1972.
3. Convention on the Elimination of all Forms of Discrimination against Women 1979 (CEFDW, 1979), New Zealand signed in 1985.
4. Convention on the Rights of Persons with Disabilities 2006, (CRPD, 2006), New Zealand signed in 2008.
5. Declaration on the Rights of Indigenous Peoples, 2007 (UNDRIP, 2007), New Zealand signed in 2010.
6. Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 2003. New Zealand has not ratified this in August 2024.
7. Convention for the Protection of all Persons from Enforced Disappearance 2010. New Zealand has not yet ratified this in August 2024.

4.6.1 Key United Nations human right principles relevant to state uplift

In this section, critical Articles, from the UDHR, 1948 are described for their relevance to the State uplift practice. The UN human rights agreements are informed by the UDHR (1948). Its Preamble covers the human rights vision.

> Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world. (UDHR, Preamble, 1948)

This Preamble describes the “inherent dignity” and “the equal and inalienable rights of all members of the human family” as fundamental human rights. All individuals, family and community, including whānau Māori, hapū and iwi, have this right in Aotearoa New Zealand.

The following UDHR 1948 Articles, linked in numerical order, have specific relevance to the rights of the child and family and the State as a duty-bearer:

- Article 1 identifies the role of each person as a rights holder and a duty bearer: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." (Later UN agreements recognized the lack of inclusion in the term 'brotherhood' used in UNDHR.)
- Article 2 states that everyone is entitled to all the rights and freedoms outlined in the Declaration “without distinction of any kind such as race, colour, or sex.” This Article could be argued or misused by those seeking equality of treatment over equality of outcomes. However, the UN Human Rights Committee (UNHR) recognised this possibility in their general comment on non-discrimination (1989) and that the goal of equality can require State parties to take affirmative action or ‘legitimate differentiation’ to reduce or prevent the conditions that cause discrimination or inequality of outcomes (Landsown, 2022; UNHRC, 1989).
- In Article 16, the family are viewed as “the natural and fundamental group unit of society.” Family, especially children and their mothers, are entitled to “special protection” (Art. 16 & Art. 25.2).
- Article 25 states that “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” In 1985, Aotearoa New Zealand signed the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW, 1985) which expands on this article, and specifically states that traditional, religious, or cultural practices cannot be used to justify discrimination against women (CEDAW, 1985, Articles. 2, 5 & 16).

In 2005, the UN Populations Fund (UNPF) clearly described the principles that underline all United Nations human rights agreements.

> Human rights are universal and inalienable; indivisible; interdependent and interrelated. They are universal because everyone is born with and possesses the same rights, regardless of where they live, their gender or race, or their religious, cultural, or ethnic background. Inalienable because people's rights can never be taken away. Indivisible and interdependent because all rights – political, civil, social, cultural, and economic – are equal in importance and none can be fully enjoyed without the others. (UNPF, 2005, p. 1)

4.6.2 Māori and the United Nations

> While some may argue that international human rights are culturally neutral, they can, and often are, viewed by Indigenous peoples as firmly rooted in western preferences for individual rights, determinism, and limited scopes of time and interconnection. (Blackstock et al., 2020, p. 9)

This comment by an Indigenous Canadian academic Cindy Blackstock reflects both the current State uplift practice that has been criticised for not viewing children within the wider context of whānau, and the earlier experiences of Māori when trying to engage in the international human rights forum.

In 1924, when Tahupōtiki Wiremu Rātana filed a petition to the League of Nations in Geneva concerning the loss of Māori rights and land, he was ignored. Over 80 years later, Elizabeth Rehu-Murchie, Dame Ngāneko Minhinnick, Moana Jackson, Aroha Mead, and Sir Archie Taiaroa (among others) participated in the UN Working Group on Indigenous peoples' meetings, drafting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007; Iwi Chairs Forum et al., 2022, p. 3).

Eminent scholar and psychiatrist Sir Mason Durie described the significant relationship that Indigenous peoples have with the land and their natural resources noting that "central to Māori identity is land" (Durie, 2005, p. 5). Durie's comment reflects the former UN Special Rapporteur José Martínez Cobo in his *Study of the Problem of Discrimination Against Indigenous Populations* (1986).

The UN Human Rights Commissioner's following comments about the general status of Indigenous peoples globally, also reflects statistics on Māori and Māori children and whānau affected by State uplifts.

> Indigenous peoples continue to be left behind and suffer disproportionately from climate change, environmental degradation, high levels of poverty, poor access to education, health, and broader human rights violations. (OHCHR, 2022, para. 1)

Colonisation and negative State interventions in Māori lives have had intergenerational impacts, illustrated by the inequitable statistics on Māori and non-Māori differences in multiple spheres of well-being. Those spheres include: health (Ajwani et al., 2003; Durie, 1985; 2003b, 2012, 2020; MoH & Otago University, 2006; MoH, 2019; Reid & Robson, 2006, 2007; WT, 257); education (Cormack, 2020; NZCER, 2000; Stats NZ, 2020; Tuhiwai Smith, 1999); welfare (*Puao-te-Ata-tu*, 1988; WEAG, 2019); justice, including police (Cook, 2021, IPCA, 2021, Jackson, 1987); employment (Cormack, 2020); and housing (Harris et al., 2006a; 2006b; Howden-Chapman & Tobias, 2000). It is believed that State interventions have impacted on life expectancy rates with Māori women living 7.4 fewer years, on average, than Pākehā women and Māori men living 7.6 seven years less than Pākehā men. (NZ Association of Salaried Medical Specialists [NZSMS] et al., 2021, p. 8).

> At this rate of slow progress, Māori males would achieve equity in life expectancy with European males by around 2090 – taking approximately 70 years. For Māori females, equity with European/Other would not be achieved until well into the 22nd century – taking approximately 127 to 134 years. (NZSMS, 2021, p. 10)

The NZSMS research findings are supported by other health research (Reid et al., 2017). To the NZSMS, there is no dispute about the cause of this vast inequity – "The causes of such health inequity are well known – socioeconomic conditions and the distribution of power, money, and resources which influence conditions of everyday life" (NZSMS, 2021, p. 3).

These statistics may explain why Aotearoa New Zealand did not sign UNDRIP until 2010, three years after most countries. In Aotearoa New Zealand, UNDRIP has also been slow to be

implemented domestically, with a UNDRIP plan developed in 2022, 12 years after ratification (TPK, 2022).

The primary basis of UNDRIP is for the State to acknowledge and address the harmful effects of colonisation on Indigenous peoples. Article 7 of UNDRIP prohibits the act of "forcibly removing children of the group to another group." UNDRIP's Annex acknowledges that "Indigenous peoples have suffered from historic injustices as a result of, inter alia their colonisation and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests" (UNDRIP, 2007, p. 3), The importance of 'Aboriginal' (Indigenous) children's cultural rights to practice their language, beliefs, values, symbols, and norms is recognised in the UNDRIP and UNCRC (UN General Assembly, 1989, 2007).

4.7 Convention on the Rights of the Child, 1989

UNCRC 1989 is the most rapidly and widely ratified international human rights treaty in history (Becroft, 2018). One of the major criticisms of human rights agreements is that when State parties apply them to policy and practice, they are not viewed as holistic documents, rather certain Articles are promoted over others that are largely ignored, so that a holistic approach to improving the lives of children, their families, and society as a whole, cannot be taken. This means that at best, human rights implementation in public policy and practice is patchy or non-existent, open to individual interpretation, or a non-consideration (OCC, 2020; UNICEF NZ, 2013, 2017). For example, before signing UNCRC Aotearoa New Zealand helped prepare, and in 1986 agreed to, the UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with particular reference to Foster Placement and Adoption Nationally and Internationally (DFPA 1986). This is an important document, as it covers foster placements, which are the first avenue of State care Oranga Tamariki uses when they conduct an uplift. However, DFPA is discussed publicly less than UNCRC and is not mentioned or visible on the Oranga Tamariki practice site or their published processes (OT, 2024).

Article 4 of DFPA offers recognition for wider kin to provide a child with care if "the first priority for a child to be cared for by his or her own parents" (DFPA 1986, Article 3) cannot be met. However, it could be argued that DFPA's Article 5 with its "paramount consideration" for a child's "need for affection and right to security and continuing care" could override the need for kin care in the instance where a child was removed from their parents and placed with the third option non-kin foster parents as an emergency response, where social workers did not have time or the skills or community contacts to identify kin carers for the child.

The same argument applies to Article 3 of UNCRC which gives a vaguer description of "the best interest of the child shall be a primary consideration", however noting that it is not a "paramount consideration."

> 3(1). In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (UNCRC 1989, Article 3(1))

UNCRC emphasises that children up to 18 years old are citizens, with human rights reinforced through State laws, with State agencies and other parties acting as human rights duty-bearers (UNICEF, 2020). However, these rights are not easily enforceable, and children, because of their age and living situations, cannot always know or articulate their rights (Higgins & Freeman, 2013). For example, the journey of a baby uplifted from its mother in hospital to Oranga Tamariki involves many health, welfare and legal professionals working as duty-bearers for "the protection and harmonious development of the child" (UNCRC, 1989, p. 1).

UNCRC's 54 Articles can be divided into four categories: "survival rights, protection rights, development rights, and participation rights" (Limber & Flekkoy, 1995, p. 5). Lansdown (1994) gives these UNCRC articles three categories; provision (family, health and well-being, education) rights, protection (safe from harm and discrimination) rights for children to be safe from discrimination, physical and sexual abuse, exploitation, substance abuse, injustice, conflict; and participation (identity, civil and political) rights.

The following four UNCRC Preamble points are the crux of what a child needs to fulfil their complete survival, protection, development, and cultural rights.

1. … the United Nations has proclaimed that childhood is entitled to special care and assistance.
2. … the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.
3. … the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.
4. … the child should be fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality, and solidarity. (UNCRC, 1989, p. 1)

Several UNCRC Articles link birth identity, culture, and the right to live with or be connected to family, which are relevant to the State uplift practice (Articles 3, 7, 8, 9, 10, 11, 18, 19, 20, 23 and 25). These concepts are important to children growing up in State care, but such children are unlikely to be aware of their rights (OCC, 2020).

Articles 2, 3, 4 and 19 guide the State, and delegated parties and institutions will protect and care for the child to ensure their well-being and safety, keeping them free from any physical, sexual harm and use its full powers and resources to do this well.

Article 5 states:

> States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a

> manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.
>
> In all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration. (UNCRC, 1989, art. 5)

A major criticism of Article 5 is that it states that the child's "need for affection and right to security and continuing care, should be the paramount consideration". But it has not linked this right as receiving this care from kin while remaining within wider kin or whānau, so that cultural links remain if they cannot live with parents.

In an uplift situation where a child is urgently removed from kin, an Oranga Tamariki social worker may not have the time, skills or capability to search and contact wider kin. As such, the child is usually placed with non-kin foster parents who are strangers. The length of time a child spends with non-kin foster carers developing bonds can significantly impact a child's chance to be reunited quickly with kin, (see case example described in section 5.6.2). The UN *Guidelines for the Alternative Care of Children* (2009), while reinforcing UNCRC, states that the State's "removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration" (UN, 2009, 64/142.2a).

Articles 8, 20 and 30 describe the child's rights to their birth identity and culture (explored in Section 4.7.1).

Unlike the Convention on the Elimination of all Forms of Discrimination against Women, (1979), the Convention on the Rights of Persons with Disabilities (2006), and the Declaration on the Rights of Indigenous peoples (2007), UNCRC (1989) was largely created without input from the children, including Indigenous children, whom it affects (Freeman, 2000; Lundy, 2007; Lundy et al., 2015).

> The 1989 Convention was not formulated by children, nor did they have any real input into it. A convention in which the child's voice is heard and acted upon is a matter of some

> controversy. However, it seems ironical “in having a Convention which emphasises participatory rights (in Article 12) whilst foreclosing the participation of children in the formulation of the rights encoded”. (Freeman, 2000, p. 282)

Aotearoa New Zealand, despite the best efforts of the Office of the Children's Commissioner, has been slow to incorporate UNCRC in State policy and practice, despite signing this agreement in 1993 (CRC, 2023; OCC, 2020; UNICEF NZ, 2013, 2017). This inaction is common among UNCRC’s signatories (Boumans, 2015). In the Vulnerable Children Act 2014, there was no reference to the rights or voices of children (Expert Panel, 2015), though participant rights, in line with UNCRC were added to the renamed Children’s Act 2014 in 2018. The Committee on the Rights of the Child’s latest country report (CRC, 2023) was clear in its directions to the New Zealand Government on UNCRC’s sections needing ‘urgent ‘action, which are also areas that relate to the State uplift practice.

> Urgent measures must be taken: non-discrimination (para. 16), violence against children (para. 24), children deprived of a family environment (para. 28), children with disabilities (para. 31), standard of living (para. 35), children belonging to minority or Indigenous groups (para. 40) and administration of child justice (para. 43). (CRC, 2023, p. 1)

In the same CRC report (2023), the Committee noted that its 2009 recommendation had not occurred - “to systematically assess the impact of policies, legislation and government services in addressing the root causes of the vulnerability experienced by Māori children and their families, including the higher likelihood of living in deprivation and poverty. (CRC, 2023, p. 12)

Assessing legislation, public policies and services, which may create inequalities for Māori, is a crucial State action which could prevent Māori children and their families from separation through State uplift. Although the Ministry of Social Development (2023) is the lead agency for administering the UNCRC, it is the collective responsibility of the State government and public service to enact UNCRC. Each of the CRC’s last five reports has noted a lack of progress by the State duty bearer and the public service duty-bearers on the same human rights issues for children (CRC, 1997; 2003, 2011; 2016, 2023. In the 2023 report, the CRC again restated that the New Zealand government, and the

public service were failing to recognise the human rights of children in State care, and particularly Māori and their kin.

> The Committee urges the State party:
>
> (a) To strongly invest in measures developed and implemented by Māori children and communities to prevent their placement in out-of-home care, limit removal, when it is deemed necessary, to the shortest time possible, provide them with adequate support while in alternative care, including access to mental health and therapeutic services, and facilitate reintegration into their families and communities;
>
> (b) To prevent and reduce the number of children removed from their family environment by providing appropriate assistance and support services to parents and caregivers in the performance of child-rearing responsibilities, including through education, counselling and community-based programmes for parents. (CRC, 2023, p. 8)

4.7.1 Child rights to identity and kin

There are three key Articles in UNCRC that support an uplifted child's continued connection to their birth identity and culture.

> UNCRC Article 8
>
> 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
>
> 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.
>
> Article 20. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State…When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and the child's ethnic, religious, cultural and linguistic background.

Article 30 illustrates that UNCRC is one of the first international human rights treaties to explicitly address the situation of Indigenous children (Foy & UNICEF, 2003).

> Article 30
>
> In those States in which ethnic, religious or linguistic minorities or persons of Indigenous origin exist, a child belonging to such a minority or who is Indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language. (UNCRC, 1989)

It was not until 2009 that CRC published its *General Comment No. 11 (2009): Indigenous children and their rights under the Convention [on the Rights of the Child]* (CRC, 2009). The lengthy comments that follow are significant because they describe an approach which, if it had been consistently applied in Aotearoa New Zealand, would have reduced the number of Māori children in State care.

> Furthermore, States should always ensure that the principle of the best interests of the child is the paramount consideration in any alternative care placement of Indigenous children and in accordance with Article 20 (3) of the Convention pay due regard to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background. In States parties where Indigenous children are overrepresented among children separated from their family environment, specially targeted policy measures should be developed in consultation with Indigenous communities in order to reduce the number of Indigenous children in alternative care and prevent the loss of their cultural identity. Specifically, if an Indigenous child is placed in care outside their community, the State party should take special measures to ensure that the child can maintain his or her cultural identity. The application of the principle of the best interests of the child to Indigenous children requires particular attention. The Committee notes that the best interests of the child is conceived both as a collective and individual right, and that the application of this right to Indigenous children as a group requires consideration of how the right relates to

> collective cultural rights. Indigenous children have not always received the distinct consideration they deserve. (UNICEF, 2004, p. 1)

By incorporating UNDRIP into legal processes, particularly in the Family Court, McBeth (2015) states that "Māori children's collective cultural rights must be assessed when determining their best interests" (p. 109). If enacted, this legal consideration and action would help reduce the number of Māori children being uplifted and entering State care. In 2023, the CRC in its sixth report on New Zealand and its UNCRC implementation, repeated the same request since its first report in 1987 for the New Zealand government to incorporate UNCRC into domestic legislation (CRC, 2023). Identity formation begins in early childhood (Harris et al., 1995; Peterson, 1989). However, in te ao Māori (Māori worldview), a baby is born with an identity gifted from ancestors through whakapapa and this is not to be broken (Ahuriri-Driscoll & Blake et al., 2023; Blake, 2012; Durie, 2001;2020; Haenga-Collins Lawson-Te Aho, 2010; Mead, 2003; Moeke-Pickering, 1996).

Māori identity forms through the role of whakapapa (Durie, 2001; Lawson-Te Aho, 2010; Mead, 2003). In 1997, Durie stated, in the *International Journal of Mental Health*, "the development of a positive cultural identity is necessary for optimal mental health." (Durie, 1997, p. 24). In this paper, Durie linked this position to the then draft UNDRIP (UNDRIP 2007), recognising culture's importance to personal development. Whakapapa, kinship practices including Māori language and having a tūrangawaewae [Māori concept that means a place of empowerment and connectedness such as kin, marae, a tribe land, a mountain, a river or a tribe] (Te Aka Māori Dictionary, 2023), have always been significant for Māori identity (Broughton, 1993; Durie, 2001; Moeke-Pickering, 1996; Newman, 2013; Murchie, 1984).

In the Ministry of Justice report, *Guardianship, Custody and Access: Māori Perspectives and Experiences* (2002), the fundamental principles underlying Māori child-raising were identified. These traditional principles draw on the ancient life story of Māui-tikitiki-a-Taranga (Māui), passed down through generations to inform "the Māori pattern of child-raising" (p. 140). These fundamental principles include:

- The significance of whakapapa.
- Children belong to whānau, hapū and iwi.
- That the rights and responsibilities for children are shared.
- Children have rights and responsibilities to their whānau.

(Durie, 2001; Mikaere, 2003; MoJ, 2002; Newman, 2013; Walker, 1997)

In Aotearoa New Zealand, children's rights must be understood within the context of whānau and family (Child Poverty Action Group et al., 2018). In the Independent Children's Monitor (ICM, 2022) research, of 352 tamariki Māori in the care of Oranga Tamariki from 2021 to 2022, 38% had not had an assessment of their identity, cultural connection or belonging needs; and 61% had not had their wider cultural connections identified, including making contact arrangements with members of their hapū and iwi. These connections are essential for belonging to a family and family reunification and adoption research shows what happens when these essential kinship links are broken (Newman, 2013, Haenga-Collins, 2017).

The concept of identity manifests itself with the individual child, their kin and community through early and regular interactions. This fundamental relationship lays the foundations for the child to grow, become strong and establish autonomy and independence from others (Harris et al., 1995; Lorentz et al., 2012016; Taylor Oskay, 1995). This sense of belonging links to psychologist Kurt Lewin's comments about social identity, which state that individuals need a firm sense of group identification to maintain a sense of well-being (Lewin, 1948; Tuomela, 2007). Tajfel and Turner (1979) developed this further as social identity theory, where just being a group member gives individuals a sense of belongingness that in most instances contributes to a positive self-concept (Phinney, 1990).

A newborn baby's separation from its kin caregivers for a lengthy period, such as in an uplift, can significantly affect their long-term sense of identity (Erikson, 1959; Grotevant, 2017; Howard & Martin, 2011; Sugrue, 2019) and attachment (Ainsworth, 1979; Bowlby, 1969, 1973, 1980).

Benoit (2004) identified that a child's attachment to non-kin caregivers is less likely to occur in multiple foster placements. Other research identifies that experiencing multiple State care placements affect a child's well-being, safety, and ability to belong and make attachments which can cause academic, emotional and social difficulties (ACC, 2015; Braungart-Rieker & Wang, 2021; Pardek, 1984; Proch & Taber, 1985; Robinson, 2020; Ruban et al., 2007; Rutter, 1987). Multiple foster placements are the norm for children in Oranga Tamariki care (OT, 2018, 2021).

Outside of State interventions, many children, both Māori and non-Māori, have been taken in by whānau and extended family when there has been a need for care (Keddell, 2019; MAC, 1986; Worrall, 2016). In the 2013 New Zealand Census, 9,543 grandparents were identified as raising a total of 17,000 grandchildren (Gordon, 2016, p. 1). The number is likely to be greater in 2024 as many of these kin arrangements are largely undocumented. However, in 2022 an estimate of more than 80% of children and young people were being looked after by grandparents or wider kin following a family breakdown In New Zealand (Grandparents Raising Grandchildren, 2022, p. 12). The use of kinship care, instead of non-kin foster care, is increasing globally (Connolly et al., 2017; Delap & Mann, 2019; Hallett, 2023; Keddell, 2019), with 20 times more children in the United Kingdom in kinship care than in other forms of alternative care (Delap & Mann, 2019, p. 6).

There are multiple positive benefits to children being in wider kin care as opposed to State foster care with non-kin. Children placed with kin are more likely to experience permanent stability and reduced behavioural problems in their home life than those in non-kin foster care (Cheung et al., 2011; Falconnier et al., 2010; Fechter-Leggett & O'Brien, 2010; Gleeson, 2007; Helton, 2011; Rubin et al., 2010; Testa et al., 2010; Winokur et al., 2014; Zinn et al., 2006). Children in kin care are more likely to have contact with their parents and siblings, than those in non-kin foster care, and to stay at the same school as they remain in the same neighbourhood (Rubin, et al., 2007, 2008; Worrall, 1996, 2005, 2009). Kin carers can struggle financially and with their well-being, as they do not receive the same level of government financial support that non-kin foster carers receive (Atwool, 2010; Grandparents Raising Grandchildren, 2022; Infometrics, 2022; Synergia, 2022; Worrall, 2009).

4.7.2 Tension - child's individual rights and parental rights

In Chapter 2, the ontological discussion about the Western traditional view of the child as a 'blank slate' and the 'property' of parents versus the child as a unique individual and active participant in the family ecosystem extends to how child rights are viewed. Te One (2011) states that adult views on children's rights "are diverse" (Te One, 2011, p. 42). UN international human rights agreements have traditionally positioned individual rights over collective, family, or whānau rights (Freeman, 1995, 2006, 2007; Kymlicka, 2003; van Buren, 1995). A child's rights are seen as separate from their parents, which could lead to "an implicit mistrust of their carers, and a legitimisation for outside professionals to intervene" (Pupavac, 2001, p. 100).

In UNCRC, the child's individual and collective human rights are identified in the context of the family and wider family and community life. This context is also reflected in UDHR and UNDRIP and is inherent in Te Tiriti (Child Poverty Action Group, 2018; Kukutai & Cormack, 2020). However, Geraldine Van Bueren (1995), a human rights scholar involved in drafting UNCRC, highlights the incongruity between the rights of the individual child and their family - "Although the family serves as the basic unit of society, international human rights law fails to enforce the rights of family members because its procedural focus is on the rights of individuals" (Van Bueren, 1995, p. 762).

The focus on the individual's rights and a lack of recognition of the collective rights of the family are identified in *Pūao-te-Āta-tū (1987)*. In this Ministerial Advisory Committee (MAC) report (1986), a significant document in the New Zealand context, which investigated racism in child protection services, Chair John Rangihau wrote, "The Māori child is not to be viewed in isolation, or as part of a nuclear family" (MAC, 1987, p. 6). Fifteen years later, most 'current' legislation was still "based on 'individual rights and nuclear families" (Pitama, Ririnui & Mikaere, 2002, p. 95). In 2023, and in the previous 2019 report, the Committee

4.7.3 Consideration of UN child rights and parental rights in New Zealand's legislation

UN principles about the child as an essential member of its family and extended family and family preservation and strengthening were incorporated in the Children, Young Persons and their

Families Act 1989 (CYPF Act 1989, Doolan & Connolly, 2006; Iwanek, 2017; Worrall, 2016). However, in the later Oranga Tamariki Act 1989, the Act focuses mainly on the individual rights of the child and includes the parents only after an uplift has occurred (Iwanek, 2019). The Children's Amendment Act 2018 includes UNCRC and incorporates Te Tiriti into domestic legislation and states that "children should be viewed in the context of their families, whānau, hapū, and iwi, other culturally recognised family groups, and communities." (Children's Amendment Act 2018, s. 6C). Human rights advocate and lawyer Robert Ludbrook (2009) described the dilemma.

> There has been a tendency to polarise children's rights and parents' rights and to view them as being competitors in a battle for power so that each can have rights only at the expense of the other. This is a false polarity as what is good for children is generally good for their parents and vice versa. (Ludbrook, 2009, p. 225)

Ludbrook's (2009) comment typifies how at every stage of the uplift, State agencies can view the needs of an individual child in isolation from the needs of the parents or view the child in isolation from their immediate kin and the context of their wider whānau and community. This attitude can mean that State interventions can be conflicted, based on removing the children but not helping the parents or helping the whole whānau.

Although, a child's views are supposed to be taken into consideration in UNCRC and social work practice, the interpretation of the child's view is the responsibility of duty-bearers. As the New Zealand Government did not sign *UNCRC's Optional Protocol* until December 2022, eight years after its development, children and child advocacy groups in Aotearoa New Zealand, were denied a process to raise their human rights violations in an international setting when there is not always a clear process for children to do this domestically (MSD, 2022; CRC, 2023). In 2017, the New Zealand Government amended the Oranga Tamariki Act 1989, reflecting Article 12 of UNCRC 1989, enabling children and young people's participation rights in any family group conference or court processes.

4.8 Key human rights roles – rights-holders and duty-bearers

As declarations on human rights, UND 1948 and UNCRC 1993 define the key roles of *rights-holders* and *duty-bearers*. Applying a human rights-based approach *rights-holders*, including women, girls, ethnic minorities, and others, are considered active agents and have the right to participate in their own rights realisation and development. They can hold duty-bearers accountable for promoting equity and non-discrimination. Rights-holders, such as children, have legitimate claims to hold accountable duty-bearers with powers, such as the State, State politicians, State agencies, and public servants, for working in their best interests to promote equity and non-discrimination (UNICEF, 2017). The UN High Commissioner for Human Rights expects individuals to respect and stand up for others' human rights (OHCHR, 2021).

4.8.1 Duty-bearers in Aotearoa New Zealand

When the State child protection agency Oranga Tamariki removes a child from its family to take into State care, the State becomes the legal parent with has both human rights duty bearer obligations and Te Tiriti responsibilities to uphold (UNCRC, 1989; OT Act, 2019). *Duty-bearers* are those organisations and people with a particular obligation or responsibility to respect, promote and realise human rights, and to abstain from human rights violations in the way that they fulfil their obligations. Governments and their agencies (the State) in human rights agreements, are considered the principal duty bearers (MFAT, 2013).

Duty-bearers' in this present research refers to State agencies, and their staff who are public servants. Depending on the State delegation and context, individuals (e.g., parents, foster parents), charities, non-profit organisations, local organisations, and private companies, can also be duty-bearers (UNICEF, 2017). However, public service understanding, and applying human rights within the work context and the responsibilities of duty bearers, can be considered limited (OCC, 2020; UNICEF NZ, 2013, 2017).

As a signatory of UN human rights agreements States, such as Aotearoa New Zealand's government, also have obligations and duties. Under international law the State must respect,

protect and fulfil human rights. It is essential to define what these State responsibilities mean, as they impact all citizens, including children and families. The UN describes these State responsibilities.

> The obligation to **respect** means that States must stop interfering with or curtailing the enjoyment of human rights.
>
> The obligation to **protect** requires States to protect individuals and groups against human rights abuses.
>
> The obligation to **fulfil** means that States must take positive action to facilitate the enjoyment of fundamental human rights. (OHCHR, 2023, para. 9)

By signing up to UN agreements, the New Zealand Government of the time, and subsequent governments, have agreed to consider considering human rights and these responsibilities to uphold human rights as part of the governance of legislation. These agreements also include the duty-bearers who work for the State and other duty-bearers who have other roles in protecting children. At an international level, the Committee on the Rights of the Child (CRC) is the body of 18 independent human right experts that monitors UNCRC implementation by its States parties who submit reports every five years to the Committee on how the rights of children are being implemented in their country. (Office of the High Commissioner for Human Rights, 2023).

The domestic UN Convention on the Rights of the Child Monitoring Group (UMG) monitors the New Zealand government's implementation of UNCRC, its Optional Protocols and the government's response to recommendations from the CRC (OCC, 2020, 2022). The Chief Children's Commissioner's convenes this group (OCC, 2022). Permanent UAG members include Action for Children and Youth Aotearoa (ACYA), the Human Rights Commission, Save the Children New Zealand, and the United Nations Children's Fund New Zealand (UNICEF, 2021).

The Chief Children's Commissioner's statutory role, like the predecessor Children's Commissioners, is to raise UNCRC awareness and understanding within Aotearoa New Zealand and to monitor how the State departments and agencies apply and implement UNCRC.

The Crown entity Mana Mokopuna - Children and Young People's Commission established in July 2023 by a board of six Commissioners is led by the Chief Children's Commissioner to replace the Office of the Children's Commissioner (OCC) created in 1989. The former office is referred to in this in this research through its research reports and participants interviews.

The Independent Children's Monitor (ICM), established in July 2019, monitors the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 and the three agencies with State care and custody responsibilities for children - Barnardos, Open Home Foundation, and Oranga Tamariki (ICM, 2022). In May 2023, ICM's role was expanded to monitor all agencies (government health, education, police, and disability services, as well as NGOs) that provide services to children and young people under, or operating in connection with, the Oranga Tamariki Act 1989. (Oversight of Oranga Tamariki System Act 2022).

4.9 United Nations conventions and Te Tiriti frameworks

The table in Appendix G summarises the international human rights conventions, Te Tiriti framework and domestic legislation that apply to the State uplift practice. Since the Treaty of Waitangi Act 1975, the intent of Te Tiriti has been recognised as a constitutional document, however Te Tiriti rights "can only be enforced in a court of law when a statute or an Act explicitly refers to the Treaty" (MoJ, 2023, para. 3). However, some rights, such as equality (Article 3), are also referenced in the Bill of Rights Act 1990 and the Human Rights Act 1993 and are enforceable in Court (MoJ, 2023).

> The Treaty of Waitangi is New Zealand's own unique statement of human rights. It includes both universal human rights and Indigenous rights. It belongs to and is a source of rights for all New Zealanders as is the adoption of the Declaration on the Rights of Indigenous peoples by the United Nations in 2007. (*Human Rights Review*, 2010, p. 40)

In 2017, the then Children's Commissioner Judge Andrew Becroft described a relationship between Te Tiriti and UNCRC.

> In New Zealand, we have a unique context with Te Tiriti 1840 o Waitangi, to apply the Children's Convention for all children. As a country, I think we need to be much more enthusiastic and positive about child rights – especially in the context of a child's connection with their family, whānau, hapū, iwi and communities. (OCC, 2017, p. 2)

Unlike Te Tiriti 1840, the UNCRC 1989, which New Zealand signed in 1993, is an international human rights document. These two agreements link to other human rights tools, domestically, including the Bill of Rights Act 1990 and the Human Rights Act 1993, and internationally to other United Nations human rights treaties which New Zealand has signed.

The Human Rights Commission (HRC) administers Aotearoa New Zealand's domestic human rights framework as prescribed in the Human Rights Act 1993 (HRC, 2021). Breen (2020) explains that the domestic Human Rights Act prohibits age discrimination but does not apply to those under 16 and "the New Zealand Bill of Rights Act 1990, does not include the right to health (physical or mental) or to an adequate standard of living" (Breen, 2020, para. 14) There are many articles in the human rights treaties that Aotearoa New Zealand has signed which do not support the uplift practice, and the State targeting of Māori and some relevant articles are identified in this section.

In July 2019, following the Hastings case, the Government passed legislation to strengthen Oranga Tamariki's chief executive duties, and reporting on the five quality assurance standards was introduced in relation to Te Tiriti which are specific to Māori children in State care (Oranga Tamariki Act 1989 amendments in effect from 1 July 2019).

> These legislation changes state that "policies, practices and services of the department have regard to mana tamaiti (tamariki) and the whakapapa of Māori children and young persons and the whanaungatanga responsibilities of their whānau, hapū and iwi" and to develop strategic partnerships with iwi and Māori organisations, and a culturally competent workforce. *(*Oranga Tamariki Act 1989, s. 7AA)

However, in May 2024, under an initiative by the coalition government partner ACT, sought to repeal this legislation as it did not consider the section 7AA requirement making the chief

executive of Oranga Tamariki's 7AA Te Tiriti responsible for ensuring the whakapapa of Māori children was relevant in their State care placements (Bill to repeal Section 7AA of the OTA, 2024, May 21).

The repeal of section 7AA went against Oranga Tamariki's own advice to Minister Cchour and Cabinet (Oranga Tamariki, 2021). Auckland University social lecturer, Kendra Cox said the lack of consultation "with Māori organisations with close connections to Oranga Tamariki" has meant that "some [Waitangi Tribunal] have rightly argued this was in direct violation of Te Tiriti o Waitangi and 7AA itself" (Cox, 2024, para. 10; WT, *WAI 3350,* p. 30). This legislation was passed on 3 April 2025, despite the majority of select committee's submissions opposing this change. In the Social Services and Community Committee [SSCC] report back to Cabinet, opposition parties (Greens, Labour, and Te Pāti Māori) also supported the Waitangi Tribunal's findings (para. 24), stating:

> Our opposition stems from the bill's failure to honour Te Tiriti o Waitangi, its misrepresentation of tikanga Māori, and the harm it risks imposing on tamariki and their whānau. Additionally, the bill would erode accountability within Oranga Tamariki and dismantle one of the few genuine mechanisms for Māori to exercise partnership with the Crown in the child protection space. (SSCC, 2024, para. 20)

The written opposition from these three political parties also cited Mana Mokopuna's [former name Children's Commissioner] submission that "the bill is inconsistent with Aotearoa New Zealand's international obligations under the United Nations Convention on the Rights of the Child." (SSCC, 2024, para. 28).

4.9.1 Māori ecosystems – child, whānau, hapū, iwi

This section outlines the primary Western ecological model used in child protection social work. Given the considerable number of Māori children in State care, exploring, and emphasising tikanga Māori models is crucial, including the collective whānau, hapū and iwi that play a pivotal role in supporting a child and whānau.

The *Pūao-te-Āta-tū* report (1986), which identified State racism towards Māori children, described the traditional temporary and long-term care Māori provided to children not able to live with parents which preserved critical connections to 'whanaungatanga' (whānau and kinship ties), 'whakapapa' (ancestral lineage), 'te whenua' (the land) and 'te reo' (the language) (MAC, 1986). These four components are essential to both Māori identity and Māori family ecosystems such as whānau, hapū and iwi (Broughton, 1993; Harmsworth & Awatere, 2013).

> Children were best placed with those in the hapū or community best able to provide, usually older persons relieved from the exigencies of daily demands but related in blood so that contact was not denied. Placements were arranged to secure lasting bonds, commitments among relatives, the benefit of children for the childless, and relief for those under stress. Placements were not permanent. There is no property in children. Māori children know many homes but still one whānau. (MAC, *Pūao-te-Āta-tū* 1986, pp. 22-23)

Six Māori models are described in Table 3, on the next page, and in various writings (Durie, 1982; Durie, 1999; King, Cormack, & Kōpua, 2018; Meihana, Pere, 1991/1997; Pitama et al., 2007; RCSP, 1988; Wilson et al., 2021), which illustrate aspects important to consider when working with whānau Māori.

Table 3

Māori ecosystem models (Note the repetition of key dimensions of health within a Māori worldview)

Te Whare Tapa Whā (Durie, 1982)	***Te Wheke*** (Pere, 1984)	***Te Pae Māhutonga*** (Durie, 1999)	***Meihana model*** (Pitama et al., 2007)	***Te Hā o Whānau*** (Stevenson, 2018)	***Oranga Mokopuna*** (King et al., 2018)
Wairua: Spiritual health **Hinengaro**: Mental health **Tinana**: Physical health **Whānau**: Family health The whare is built on a foundation of whenua connection to land & whakapapa	**Wairuatanga**: Spirituality **Hinengaro**: The mind **Taha Tinana**: Physical well-being **Whanaungatanga**: Extended family **Mauri**: Vitality, life force **Mana Ake**: Unique identity of individuals & family **Hā a koro mā a kui mā**: Breath of life from the ancestors **Whatumanawa**: The open & healthy expression of emotions Illustrated as Te Wheke – an octopus	**Mauriora**: Access to te ao Māori **Waiora**: Environmental protection **Toiora**: Healthy lifestyles **Te Oranga**: Participation in society **Te Mana Whakahaere**: Autonomy Illustrated as Te Pae Māhutonga -The Southern Cross	**Wairua**: An investigation of factors that contribute to engagement & level of attachment the client/whānau feel to the service being provided **Hinengaro**: Ensures cultural accountability of measures used to provide evidence. **Tinana**: The service encompasses the importance of physical well-being & its relationship to overall psychological well-being. **Iwi-Katoa**: Identifies current organisational strengths & weaknesses to work effectively with Māori. **Taiao**: Ensures physical accessibility & acceptability of the service. Illustrated by ngā roma moana waka (double hulled canoe) moving across the ocean	**Manaakitanga**: Protects & uplifts mana **Whakawhanaungatanga** Relationships with people & space **Rangatiratanga**: Ownership of Māori participation The model was developed directly from Māori whānau experiences of the maternal-infant healthcare system & is informed by three Articles of Te Tiriti o Waitangi: kāwanatanga, rangatiratanga & ōritetanga Illustrated as Te Hā o Whānau - whānau voices leading maternity care	**Rito**: Pēpē/mokopuna – the child. The rito is protected by Whaea: the mother & Matua: the father Tīpuna: Grandparents are the outside & supporting leaves Pakiaka-Roots to the land, whenua foundation Illustrated as Pā Harakeke -A flax bush

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4.9.2 Bronfenbrenner ecological systems model

Oranga Tamariki Practice Centre's website highlights the significance of psychologist Urie Bronfenbrenner's ecological systems model, illustrated in Figure 5 on the next page, stating that it is one of the most widely understood theories about systems amongst practitioners working with children (OT, 2023, para 6). Bronfenbrenner saw the individual's experience "as a set of nested structures, each inside the next, like a set of Russian dolls" (Bronfenbrenner, 1979, p. 22). The five layers surrounding the child in the centre, represent five different systems: the microsystem, the mesosystem, the exosystem, the macrosystem, and the chronosystem. Each of these separate environmental systems, such as parents, friends, schools, systems, and society, influence a child's outcomes (Gallagher & Forgione, 2005).

This model requires communication, feedback, and adaptability from people and systems over time, aligning with biologist Karl Ludwig von Bertalanffy's general systems holistic model (1950). Bronfenbrenner refers to any change in a person's role or setting as an "ecological transition" (Bronfenbrenner, 1979, p. 26).

Bronfenbrenner's model was influenced by the works of group dynamics psychologist Kurt Lewin and child-centred educationalist Jean Piaget, particularly Piaget's 1958 work, *The Construction on the Reality of the Child* (Bronfenbrenner, 1979, p. 9).

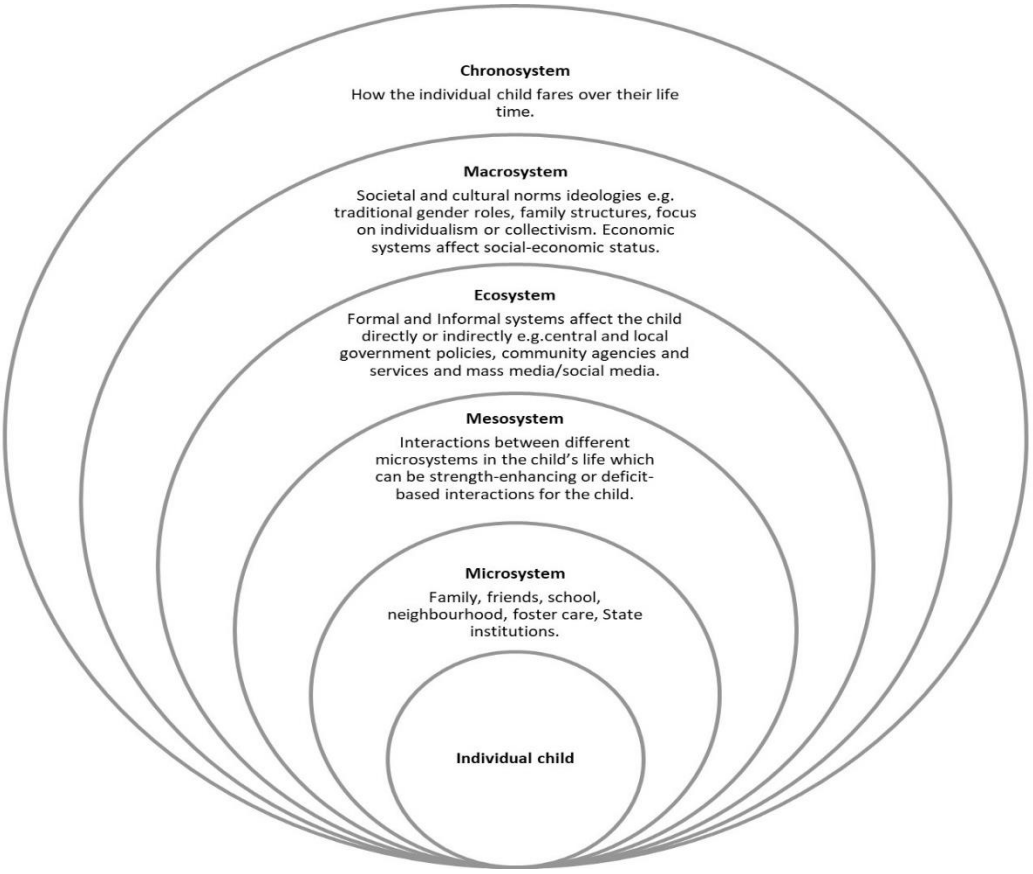
While Oranga Tamariki views Bronfenbrenner's theory as essential for social work and other practitioners working with children, its application in the unique context of Māori ecosystems, particularly in Aotearoa New Zealand, remains largely unexplored. This gap highlights the potential limitations of Western models in fully understanding and addressing the needs of Māori children and their whānau, highlighting the pressing need for a more inclusive and culturally sensitive approach to provide a clear direction for future research and practice.

Bronfenbrenner's model places the child and family at the centre. However, it lacks the spiritual, mental, physical, and environmental holistic approach which connects the person to their whānau, including whakapapa ancestry, their land and language and other complexity

offered in Māori ecosystems (Durie, 1982, 1999; King et al., 2018; Pere, 1984,1991; Pitama et al., 2007; Stevenson, 2018). Otago University social work professor Nicol Atwool (2021) states that "New Zealand has a history of importing 'evidence-based' models from other countries" with much of these child protection models being irrelevant, culturally inappropriate and damaging (Atwool, 2021, p. 550).

Figure 5

Bronfenbrenner's Ecological Systems model



Note: Adapted from Bronfenbrenner, 1979

Bronfenbrenner's model does not explicitly promote or advocate for the role, and strength, of mothers and their links to their children and their greater ecosystem, which contrasts with tikanga Māori and previously mentioned UN declarations. Legal scholar Ani Mikaere, in the

article *Māori Women: Caught in the Contradictions of a Colonised Reality* (1994, 2022), cites Pere's description of women as “te whare tangata, the house of humanity” (Mikaere, 1994, p. 1) as central in whānau, hapū and iwi ecosystems. This phrase is important as it reflects both the strength of women and their importance in Māori ecosystems.

The importance of women as mothers bringing forth the future generation is further illustrated in the article *Cultural Safety and the birth culture of Māori* (Wepa & Te Huia, 2006). Health researchers Dianne Wepa and Jean Te Huia (2006) (Te Huia was also the midwife in the Hastings case). identified the traditional practices of burying the ‘whenua’ (placenta), in the ‘whenua’ (land), thus returning it to Papatūānuku, the Earth Mother who sustains all humanity. Having the same word for the placenta and the land highlights the interconnectedness.

The land where the placenta is planted has significance to the child and their whānau as their turangawaewae or place where they stand (Royal, 2007). Being connected to Papatūānuku in this way gave Māori many ecosystem responsibilities and obligations to sustain and maintain the well-being of their people, communities, and natural resources for future generations (Harnsworth & Awatere, 2010; Mead, 2011; Metge, 1996; Wepa & Te Huia, 2006).

In contrast with Bronfenbrenner’s model, Māori ecosystem models are developed “for Māori, by Māori, with Māori,” making them particularly relevant in the Aotearoa New Zealand context (Smith, 2017, p. 85), and the uplift practice. Researchers Nicola Bright and Sally Boyd examined several holistic Māori health and well-being models, listed in Chapter 4, finding that “Western approaches often appear to position measurement tools as ‘culture free’ and appropriate for everyone when, in reality, they are founded on the culture and values of a dominant culture” (Bright & Boyd, 2024, p. 4).

Chapter 5: The State Uplift Practice in Literature

The previous chapter provided a human rights framework which is foundational to this research as this thesis asks the question - ‘From the public servant's perspective as a duty bearer, how does the child-only journey, from hospital to stranger care, operate ‘in the best interests of a child’ as per the United Nations Convention on the Rights of the Child, 1989 (UNCRC)?’

This chapter begins with the literature around pregnancy and childbirth in Aotearoa New Zealand, the literature on what is known about the State uplift practice, including research resulting from the Hastings case in 2019, 2020 and 2021 and the Royal Commission on Abuse in State and Faith-based Care (RCASC) from 2018 to July 2024. Secondary research was also accessed and included after completing the participant interviews (Chapter 6).

5.1 Pregnancy, childbirth, and the State uplift practice

In traditional Māori family structures, women are acknowledged and respected as te "whare tangata," meaning "the house of humanity" (Mikaere, 1994, p. 1) and they and their children were supported through pregnancy, childbirth and with childcare (Jenkins & Mountain-Harte, 2011). Historically, most Māori and Pākehā infants were breastfed (Kedgley, 1996; Papakura, 1938). However, the New Zealand State's intervention of uplifting newborn babies from the traditional supportive ecosystems has led to both child and maternal harm and the disruption of breastfeeding practices (Critchley, 2022; 2020; ONZ [Boshier] 2020; WO, 2021).

In human rights frameworks, motherhood and childhood are also “entitled to special care and assistance” (UNDR, 1948, Art. 25), but these rights for both parties are not recognised in the Aotearoa New Zealand State uplift practice nor in all maternity care. In a Children's Commissioner's report (2020) on the uplift practice and its impact on Māori whānau, recommendations include treating mothers and babies with humanity, addressing racism, discrimination and unprofessional practices by social workers (OCC, 2020).

It was found that 40% of the 6,000 New Zealand children born between 2009 and 2010 participating in the *Growing Up in New Zealand* (GUINZ) research, along with their parents, (2010) lived in the country's most deprived areas, with parents most likely to be unaware of government support (Morton et al., 2010).

Pregnancy and motherhood can be challenging in Aotearoa New Zealand, with 40% of pregnancies being unplanned (Morton et al., 2014). Unplanned pregnancies can create parental stress and lead to economic, health, social and emotional problems for both mother and child (Bahk et al., 2015; Brown & Eisenberg, 1995; Foster et al., 2019; Institute of Medicine, 1995; McDonald-Mosley & Burke, 2010). In the longitudinal Christchurch Health and Development Study (2015), unplanned pregnancy was linked to "modest increases in the risk of adverse family socioeconomic outcomes, family dysfunction, and poorer parent–child relationship outcomes" (Boden et., al, 2015, p. 389).

Since the late 1970s, New Zealand mothers giving birth in hospital have had shorter stays compared to previous generations of mothers who could stay for up to two weeks (Pollock, 2011). The World Health Organisation (WHO), which includes very low-income countries, recommends a minimum 24-hour hospital stay for adequate healthcare after a vaginal birth (WHO, 2013). The New Zealand Maternity Services Consumer Council states, "Most hospitals now encourage women to leave hospital within 48 hours of giving birth for a normal birth and within five days for a caesarean birth" (NZMSCC, 2023, para. 5).

Short hospital stays can have negative impacts (Campbell et al., 2016; Kaur et al., 2016), including increased hospital readmittance for both mothers and babies (Jones et al., 2021; Lain et al., 2015). Most maternal and infant deaths occur in "the first month after birth, with almost half occurring within the first 24 hours and 66% during the first week" (WHO, 2015, p. 1). The New Zealand Maternity Service Consumer Council (NZMSCC), established to give women pregnancy and childbirth information and to advocate for their rights, believe that, rather than being encouraged to

leave hospital, “the woman should decide when she is ready to leave” and able to breastfeed (NZMSCC, 2023, para. 5).

While research remains divided over whether longer hospital stays improve breastfeeding uptake of newborns (Ajetunmob et al., 2015; Cushing et al., 1998; Kaur et al., 2016, Short et al., 2016), research is in agreement that there is a strong link between maternal skin-to-skin contact and numerous positive outcomes including successful breastfeeding, a calmer mother and child, protection against infections, and the regulation of the baby’s heart rate, breathing and temperature (Li et al., 2020; WHO, 2020). Perhaps even more importantly, research unequivocally shows that adequate maternal skin-to-skin contact promotes attachment and aids the development of empathy (Bigelow & Power, 2020; Florida Atlantic University, 2020; Yaniv et al., 2021).

Skin-to-skin contact can also improve maternal mental health and postpartum healing (Bigelow & Power, 2020; Cong et al., 2021; Coolman et al., 2017; 2022). This is important as giving birth can affect a mother’s mental health and well-being, with 80% of women developing “postpartum blues" (Balaram & Marwaha, 2023, para. 1) between day three and day 10 following birth (Osborne & Standeven, 2023).

The Growing Up in New Zealand study (2014) found that 16% of mothers experienced depression symptoms in late pregnancy, and 11% of these mothers still had symptoms of depression when their children were nine months old (Morton et al., 2014). By the time, their children were eight years old, Māori and Pacific mothers were almost twice as likely to experience depressive symptoms as Pākehā mothers (Morton et al., 2020, p. 8).

In Aotearoa New Zealand, Māori mothers are three times more likely to die by suicide during pregnancy or within six weeks of birth than other mothers (Helen Clark Foundation, 2022). The New Zealand maternal suicide rate is seven times higher than in the United Kingdom, and 57% of those who died by suicide in pregnancy or within six weeks after birth are wāhine Māori (Cutfield et al., 2019; Innovation Unit, 2019, p. 4).

Almost half of mothers with postpartum depression in the United Kingdom will not seek help due to fear of having their child taken away (National Childbirth Trust, 2017). New Zealand research with 17 mothers found the fear of seeking help and having their child taken away was also an issue, particularly for Māori participants (Clapham et al. 2024; Innovation Unit, 2019). Canadian First Nation mothers were reluctant to trust health providers based on historic experiences of racism (Wright et al., 2019), also an issue for Māori (Graham & Masters-Awatere, 2020).

Birth trauma can also lead to increased fear and anxiety in mothers regarding their child's health and their own parenting abilities, resulting in potential lower emotional attachment, so that support during early parenting is crucial (Clapham et al., 2024; Molloy et al., 2021; Reed et al., 2017).

5.1.1 Uplifting babies

Kinship care existed long before child welfare practices (Delap & Mann, 2019; Keane, 2011/2017; Leinaweaver, 2014; Worrell, 2006) such as uplifts, State care and closed adoptions . Aboriginal and Torres Strait Islanders, Māori and other Indigenous peoples have traditionally had their own ways of providing intergenerational, collective care (Lohoar et al., 2014; Metge, 1995; Walker, 2017). In the nineteenth century, British colonial missionaries were horrified by the lack of gender discrimination in Māori community where men and women, of all ages, cared collectively for children enabling their mothers to have leadership roles (Mikaere, 2005; Salmond, 2018, Wanhella, 2022). Removing children from whakapapa was not part of Te ao Māori world(Ngata, 2019) In te ao Māori (Māori worldview), a baby is born with an identity gifted from ancestors through whakapapa and this is not to be broken (Durie, 2001;2020; Lawson-Te Aho, 2010; Mead, 1997, 2003; Moeke-Pickering, 1996). Otago University researcher Erica Newman (2020a) described the clash between the different worldviews of childcare with the European idea of permanency and the Māori idea of temporary care.

Whāngai care varies from the British concepts of fostering and adoption, with this “dynamic and diverse” practice continuing to this day (Kiro, 2011/2017, para. 5; Mead, 1997). Historian Basil Keane (2011/2017) states a similarity with fostering and adoption, in that it could be temporary or

permanent kin relationship, however the difference is that it is without secrecy of closed adoption. Māori children could be brought up by relatives who were not their parents, and there was no secrecy in those arrangements, with the children growing up knowing and often engaging regularly with their birth parents (McRae, & Nikora, 2006; Mead, 1997a, 1997b). Keane (2011/2017) cites Professor Wharehuia Milroy's explanation that '"atawhai" tends to equate more with "fostered child" and "whāngai" with adopted child.(Keane, 2011/2017, para. 4). However, these diverse kin arrangements are traditionally supportive and focus on nurturing the child and their kin, so they reach their full potential (Jenkins & Mountain-Harte, 2011; Kiro, 2011/2019; Keane, 2011/2011).

Section 5.1, however, described the difficulties and stresses that can occur in pregnancy, childbirth and the months that follow that can result in child/mother separation. The first three months of a baby's life are also a crucial time for New Zealand's Oranga Tamariki baby uplift practice (OCC, 2020a). In 2018, Oranga Tamariki uplifted 281 babies immediately after birth, a significant 33% increase from 211 newborn babies uplifted in 2015 (Oranga Tamariki, 2019). In the same year, 112 babies had uplift orders placed upon them during their mother's pregnancy, a decrease from 126 pre-birth orders in 2017 (OT, 2021). In the first year of Oranga Tamariki operating (2017), 532 babies under one year old were taken into State care. Between 2013 and 2023, 3,036 babies under the age of one were removed from kin and taken into State care by Oranga Tamariki and its predecessor Child, Youth and Family, (OT, 2023b, p. 1).

The State uplift practice is a significant issue in both Aotearoa New Zealand and the United Kingdom, where the practice originated, with British newborn removals typically occurring in a hospital maternity setting (Broadhurst et al., 2018; OCC, 2020c). Keddell (2017) identified that New Zealand's change in practice towards uplifting newborn babies reflected "British policy reforms in the late 2000s" (p. 27).

From 2007 to 2017, for the 52 local authorities in England and Wales, the rate of baby uplifts was 46 in every 10,000 births (Broadhurst, 2018), increasing in 2020 to 67 per 10,000 children (Bennett et al., 2022). In contrast, from 2015 to 2018 in Aotearoa New Zealand, the increase of

Māori babies taken into State care was even greater, from 67 babies per 10,000 children to 103 babies per 10,000, but the non-Māori rate was stable at 23 to 24 babies per 10,000 for the same period (Kiddell, 2019, para. 6).

Indigenous Australians, following British colonisation, experienced a long history of uplifts, the *Stolen Generations* with between one in three and one in ten Indigenous children uplifted between 1910 until 1970, with greater numbers taken in the 1950s and 1960s (*National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, 1997; Read, 1981, 2006; Wilson, 1997). Although the number of Canadian First Nations children removed from their families in the *Sixties Scoop* is unknown, by the 1970s, one in three First Nations children were separated from their families by adoption or fostering (Fournier & Crey, 1997 as cited in Sinclair, 2016, p. 9).

In the year to 31 March 2021, there were 5,400 tamariki in the custody of the Oranga Tamariki Chief Executive. This number was a reduction from 2019, when 6,429 children and young people were in the care of Oranga Tamariki following the Hastings case and subsequent inquiries, (Oranga Tamariki, 2021). In this Oranga Tamariki report (2021), this decrease of Māori children in care was largely related to the 1 July 2019 introduction of Section 7AA in the Oranga Tamariki Act. which legislated for the Oranga Tamariki Chief Executive's role to have responsibilities concerning Te Tiriti o Waitangi. The Chief Executive, and delegated duty-bearers, must consider the principles of mana tamaiti (the child's authority), whakapapa (genealogy), and whanaungatanga (relationships) when making decisions related to Māori children and young people in State care. This Te Tiriti, and legal responsibility, means that Oranga Tamariki staff need to seek care placements for Māori children with whānau, hapū or iwi kin, in the first instance, to maintain cultural identity and connection. However, Vercruyssen (2020) criticised the legal construction of Section 7AA, as not going far enough, commenting that it fails to uphold the Te Tiriti principles of partnership and reciprocity:

> The provisions in s. 7AA are worded in a way that gives a disproportionate amount of power to the Chief Executive for what is supposed to be a 'partnership'. TUnder the duties imposed on the Chief Executive; the Crown and Māori do not have equal status in the care and protection of tamariki Māori. (Vercruyssen, 2020)

The overall reduction of children being taken into care is documented in Aotearoa New Zealand's child protection history as following an "event/media-blame/legitimacy-challenge/reactive reform" pattern that often occurs after a State child protection agency receives negative public attention about their poor practices, such as after the Hastings case (Keddell et al., 2022, p. 379). Conversely, in the same research, Keddell and colleagues (2022) described increased entries into State care after a child had been killed or badly harmed in their home. It is important to note that such events, when they receive media attention, not only spark a public outcry and widespread criticism of the child protection agency, but also make the agency staff more risk-averse and likely to conduct more uplifts, resulting in more children in State care (Beddoe, 2014; Cook, 2020a; Jagannathan & Camasso, 2011; Keddell et al., 2022; Lonne & Parton, 2014; Mansell et al., 2011).

Keddell and fellow researchers (2022) unearthed "a complex relationship with political ideology, media discourses, social conditions, the institutional structures and processes of any given child protection system, legislation, and the moral and conceptual underpinnings of practice decisions" (Keddell et al., 2022, p. 378). Hyslop (2021) states that between 2011 and 2015, "politically driven child protection reform" led to more Māori babies being uplifted by the State and taken into State care (Hyslop, 2021, p. 439).

The Disinformation Project (DP), using mixed methods research to study the period June to September 2023, identified that "Aotearoa New Zealand is experiencing rising anti-Māori racism and growth in white supremacist ideologies" (DP, 2023, p. 4). This study showed that these attitudes are actively can also be reflected in political and public rhetoric, supporting Keddell and Hyslop's evidence. Arguably, the ACT political party under the leadership of David Seymour, [Deputy Prime Minister from 31 May 2025] has gained political and public prominence by targeting Māori rights.

For example, the tabling of the Treaty Principles Bill, which the coalition government said would only go as far as its Second Reading, and it did on 10 April 2025, being defeated with 112 Nos and the ACT Party's 11 Yeses. Even in defeat, Seymour promises to resurrect this Bill at a later date (Walters, 2025).

The Bill was passed, despite also the largest hikoi (protest) in modern New Zealand's history with an estimated 50,500 people marching in opposition to the Bill on 19 November 2024, and a petition signed by 200,000 people (MacManus, 2024, para. 2). Law lecturer Carwyn Jones described the Bill's introduction as leading to "an unravelling of a multitude of guiding rules for organisations, for legislation, employment agreements and policy documents" (Brettkelly, 2024, para. 19).

Further, Karen Cchour, also Minister for Oranga Tamariki and the Minister for the prevention of Family and Sexual Violence introduced a member's bill that proposed repealing Section 7AA of the *Oranga Tamariki Act 1989*. Section 7AA requires the Chief Executive of Oranga Tamariki to recognise and commit to the principles of Te Tiriti o Waitangi, especially in the State placement of Māori children with non-kin. The ACT party insists that all New Zealanders should be treated equally, and that 'race-based' policies have no place in New Zealand. Repealing Section 7AA thus affirms their commitment to "colourblind child-centric state care" (ACT Repeal 7AA petition, 2024, Cchour, 2024b). This Bill became legislation in 2025, despite the evidence of Cchour's agency Oranga Tamariki which shows that the implementation of Section 7AA has reduced the number of Māori children in State care by placing them with kin (Law Association, 2024; OT, 2023) and an overwhelming number of public submissions opposing the Bill.

5.1.2 Typical State hospital birth to home journey – non-welfare intervention

To understand the contemporary state uplift journey in Aotearoa, New Zealand, the typical mother and baby journey from state hospital birth to returning home together is described here and informed by available information from government and non-government health agencies. In Aotearoa, New Zealand, every individual born in the country, or using its public health care system,

is assigned a unique National Health Index (NHI) number that links to their health data for life (Te Whatu Ora, 2022).

Of the 6822 pregnant women enrolled in the *Growing Up in New Zealand* study (2009-2010) 98% had a lead maternity carer (LMC), with 66% choosing independent (community-based) midwives and 15% having hospital midwives (Morton et al., 2015a, 2015b). The LMC is involved throughout pregnancy, the birth and for several weeks after childbirth. If the mother arrives at the hospital with no LMC, the hospital midwife will become the LMC (NZ College of Midwives, 2022, para. 2). Hospital midwives, anaesthetists, and obstetricians are available for different delivery purposes. An independent midwife or private obstetrician can also deliver the baby in a public hospital if the mother has engaged them as LMC for the pregnancy and birth. If the baby is premature or there are other issues, the mother and baby will be in a neonatal intensive care unit within the hospital with specially trained neonatal nurses. If the baby and mother are well, they can leave the hospital within two hours of the birth, after a health check, and be discharged into an LMC's care. The ability to stay longer than 24 hours in hospital after a straightforward vaginal birth is not commonly available in Aotearoa, New Zealand.

This high-trust model relies on parents knowing that they will receive multiple LMC home visits after the birth (Health New Zealand [NZ], 2023) which may not always be possible due to high numbers of clients and / or high workload (*Midwifery Health Workforce Plan*, 2024). Once a parent has enrolled their baby at a general medical practice, a doctor will assess the baby at six weeks, including the six-week immunisations, hip screening, and vision check (including red reflex for the birth assessment). After 4- 6 weeks, the LMC discharges the mother and baby from their care and will refer them to a Well Child Tamariki Ora nurse at the client's general practice, other setting, or a Plunket nurse. Those services give the child vaccinations and check-ups and document those events in the *Well Child Tamariki Ora My Health Book*. Well Child Tamariki Ora nurses complete a final B4 School Check when the child is age four prior to starting school, then discharge the child from the

service. The mother's general practitioner (GP) and their medical team usually support the child before, during, and after this time (Health NZ, 2023).

5.1.3 State hospital birth to State care – the uplift journey

This section identifies the typical State uplift process for the mother and baby journey when the baby is uplifted by Oranga Tamariki to go into State care and be cared for by non-kin. This information comes from government agencies including Oranga Tamariki, Office of the Children's Commission, the New Zealand Ombudsman and the New Zealand Family Court and the Oranga Tamariki Act 1989 (OTA 1989).

The pregnant woman may arrive at the hospital with a LMC and family. However, if a mother arrives at hospital without a LMC, or alone, or under the influence of drugs or alcohol, a hospital midwife will be their LMC and will contact either the hospital social worker, if they have one, or a local Oranga Tamariki social worker with any concerns.

The mother may have had no pregnancy health care and there may be reasons for that. From 1989 to 2022, if a parent, particularly a mother, had a previous child or children removed under Section 78 of the *OTA 1989* then any subsequent child was highly likely to be removed by Oranga Tamariki. Social workers can organise this paperwork prior to the birth if they know about the pregnancy. Mothers in labour who are aware of that possibility may present at a different hospital to avoid an uplift, without knowing that the NHI number links them anywhere in New Zealand and Oranga Tamariki social workers may alert all hospitals of this possibility if they know about the pregnancy.

Once Oranga Tamariki is involved, hospital staff will not generally encourage the mother to breastfeed as the baby will be bottle fed formula after the uplift and in State care.

If Oranga Tamariki has been involved with the mother during the pregnancy, they are likely to be involved when the baby is born. If Oranga Tamariki does not support the 'home plans,' or there are no plans for the mother leaving the hospital, then an urgent Court application for an uplift occurs. The paperwork for the uplift may even be in process when the mother arrives in labour or

during the birth. The mother and her whānau, and often the LMC, may not know about this application, as it is a 'without notice' application (Sections 39, 40, 42 and 48 of *OTA 1989*). Therefore, they are not told until the uplift happens.

While the mother is in hospital, the uplift occurs, which commonly is undertaken by one to two social workers and two or more police officers with hospital staff present. The uplift may occur overnight when the mother is most likely to be alone with their baby.

The Children's Commission report *Te Kuku O Te Manawa* (2020c) describes an actual *'without notice'* uplift situation after *an* interview with a mother during the OCC investigation.

> In the hospital birthing unit, the young mother is in labour, supported by her LMC, her maternal grandmother and two generations of whānau gathered, all eagerly preparing for the arrival of the baby and providing unwavering support to the mother. There had been no notification of the uplift before this event, as it was an urgent 'without notice' Court order. The mother was on the birthing table, in labour, and the baby was travelling down the birthing canal when the following notification was verbally delivered by Crown Officials (usually social workers and police) who entered the room. One of the Crown officials said,"[Insert name of mother], my name is [Insert name of social worker]. I am here today to uplift this baby as a Care and Protection Order has been issued by the Family Court." (p. 12) As the baby is being born, the Crown officials wait in the birthing unit to uplift the baby as soon as it was born. (Adapted from OT, 2020c, p. 12)

As mentioned earlier, a Waitangi Tribunal report noted that between 2017 and 2021, over 90% of uplifts of Māori were executed 'without notice' (WT, 2021, p. 106), making this sudden and urgent intervention a common experience for Māori kin involved in State uplifts.

The mother who has a traumatic birth or is separated from her child is at elevated risk of postnatal depression and post-traumatic stress disorder (Ayer, 2024; Crittenden & Spieker, 2023). While coping with healing from the birth and breast milk drying up, the mother and her whānau must work out whether they can get the baby back. After an uplift, there are only 20 days to file an

appeal to the High Court (*High Court Rules 2016)* about the Court order. This is a difficult, expensive, and lengthy process involving Family Court lawyers and advocates who can support the mother, parents and whānau. It also requires counsellors, psychologists and other specialist reports, and drug and alcohol tests. An Oranga Tamariki review (2021) on the use of independent advocates supporting families with children in care in international jurisdictions showed better outcomes for reunification (Jones et al., 2021).

For Court proceedings, Oranga Tamariki documents any perceived negative behaviour or attitudes from the mother or family. Police may also do spot-checks on the mother to ascertain information about her situation, as part of the process. If the mother does not have apparent mental health issues before the birth, there is a high likelihood that the uplift and the trauma will bring on such issues or exacerbate existing symptoms (Kannan, 2020). Not all mothers and families in this position can stand up to the scrutiny of Oranga Tamariki and Police, who have more resources and more power (OCC, 2020).

A placement with a foster family are usually arranged by Oranga Tamariki or they work through contracted private agencies such as Barnardos, the Open Home Foundation, or another social services agency. A child is placed in foster care in the following contexts:

a. A Family Court Judge decides that the child needs care and protection and places them under the custody or guardianship of OT or a non-government welfare agency, through an interim or longer-term Care or Protection order.
b. A parent signs an agreement with OT, giving OT the power to place the child in foster care either as a short-term or longer-term arrangement. (However, this approval is not usually given with a 'without notice' uplift status.)
c. The foster care agreements are for temporary care (28 days initially but can be extended by another 28 days) or extended care (up to 6 months for under 7 years of age, or 12 months for older than 7 years).

d. As part of the Court order, an Oranga Tamariki social worker files a report and plan to review the child's situation every six or 12 months (MoJ, 2022; Youth Law, 2022).

Oranga Tamariki, and the Family Court, delegate the 'parent' relationship to the foster parent, though the legal custody remains with Oranga Tamariki. In the occasional situation, parents may retain day to day decision-making authority. A baby or child in State custody may be in non-kin care, whānau care or on occasion remain with their parent(s) under supervision. Mothers and babies can also be placed together in residential supported living arrangements or in whānau care (OCC, 2020a). The same LMC may not be involved any longer and the baby may, or may not, receive Plunket care.

5.7.2 Duty-bearers involved in uplifts – shared responsibility

> 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 also 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. (WT, 2020, p. 20)

The quote above is from former Oranga Tamariki Chief Executive, Grainne Moss (who resigned on 21 January 2021), defending Oranga Tamariki in the Waitangi Tribunal urgent inquiry into the Hastings case (WT, 2021). However, as Oranga Tamariki is the lead agency for uplifting children, for seeking Court orders and for managing the State care of children once removed, Moss's comment seems to be a deflection from these major responsibilities. Moss, who did not have prior experience in child protection or social work or working in the public sector, led the establishment of Oranga Tamariki in 2017, which included appointing the second and third tier senior leaders resulting one person in the leadership team having a social work qualification and seven of 12 regional managers possessing a social work qualification (Reid et al., 2020). Atwool (2020) identified that Oranga Tamariki did not allow social workers to support best practice "healing and recovery at the earliest opportunity," possibly due to its leadership of "people who are not social work-trained

and who apply managerial approaches that reduce the complexity of care and protection down to measurable outputs." (Atwool, 2020, paras 18-21).

The way Oranga Tamariki was established was also criticised in the Waitangi Tribunal's report *He Pāharakeke, He Rito Whakakīkinga Whāruarua* report, into the WAI 2915 Oranga Tamariki claim:

> The impact of structural racism on outcomes for and experiences of tamariki Māori and their whānau, and on culture and trust, means that the Crown should have identified the need to tackle structural racism when establishing Oranga Tamariki. (WT, 2021, p. 5)

In the year June 2020 to July 2021, Oranga Tamariki was responsible for the 7,153 babies and young people in its care (ICM, 2022). Criticism has also been directed at the type of foster care agencies that Oranga Tamariki delegates to look after children in its care and funds (WT, 2021). As well as Oranga Tamariki offering State care itself, most of the day-to-day care is largely delegated to faith-based charities, such as the biggest providers Open Home Foundation, Dingwall Trust, and Barnardos (ICM, 2022). These agencies are not without their difficult histories based in conservative beliefs tend to focus on the 'deficit' individual and their kin rather than systemic injustices. In recent years, 11 Dingwall staff members were charged with sexual abuse of boys in their care, dating back to the 1970s. The United Kingdom, with Barnardos support from the 19th century to the 1960s, exported an estimated 150,000 children over a 350-year period to Virginia, Australia, New Zealand, Canada, and former Rhodesia (now Zimbabwe) (Child Migration Programmes Investigation Report, 2022; Constantine, 2008; Humphries, 1994). In 2020, there was only one Māori foster care provider, at number 10, in the top 10 Oranga Tamariki funded providers (WT, 2021, p. 244).

In care and protection situations, as Atwool (2020) alluded to previously in this section, social workers face tensions between the ideal caring and relational practice which takes time and the organisational standardised need to work fast and within time limits (Adam, 2004; Antonelli et al., 2023). In 2016, Keddell and Hyslop (2019) conducted interviews with Child, Youth and Family social workers (since 2017, Oranga Tamariki) about decision-making variations when considering

uplifts and identified high workloads as a major factor. High workloads contributed to a hierarchy of risk, where cases received most attention where risk was perceived as highest or 'attention-grabbing,' leaving other cases for a lengthy period before assessment. This issue could lead to variations in practice if some families in similar situations waited a longer time while others received a more immediate response. In high workload environments, reporting demands could dominate, affecting information quality due to less time to engage directly with families (Keddell & Hyslop, 2019).

Working to professional best practice, social work requires social workers to advocate for social justice in a neo-liberal world (Hyslop, 2016; Ferguson, 2008; Parton 2014). The Munro Review of Child Protection in England (2010, 2011) for example, identified how neo-liberal social work management focus on productivity and risk-adverse practice resulting in greater numbers of State interventions into family life, rather than allowing social workers to make quality decisions based on relational approach and best practice social work. This type of social work or public sector system "tend[s] to become risk focused and this provides fertile ground for the reproduction of biases" (Keddell, 2022, p. 2).

Bias towards Māori can occur as a result of public servants, representing the Crown, not understanding or ignoring their Te Tiriti responsibility to partner with Māori in decisions about them. The separation of Māori advisory groups from groups making policy decisions reinforces the lack of power and influence Māori have at all levels within the health system (Came, 2019). This power imbalance is echoed within the Waitangi Tribunal WAI 2915 claim into Oranga Tamariki care of Māori in which whānau expressed concerns about social workers lacking respect for tikanga Māori (Māori protocols) when working with Māori (OCC, 2020). The report from the Children's Commissioner also highlighted the negative impact that child protection services isolating tamariki (children) and whānau from te ao Māori has on their well-being.

Midwives are often the first, and main, health provider to pregnant mothers and newborn babies. In certain cases, mothers may arrive at the hospital in labour and the hospital midwife is the first to assist. Most mothers have had prior contact with a community midwife who also assists them with the birth and then back at home. Midwife Jean Te Huia lodged a Te Tiriti 1840 claim urging the government to recognise the discriminatory treatment of wāhine Māori (Māori women), illustrated by the taking of their children and inequities in maternity care, as part of the Mana Wāhine Kaupapa Inquiry (WT, 2020, WAI 2700), claims which allege prejudice to wāhine Māori as a result of Te Tiriti 1840 breaches by the Crown.

> In New Zealand health surveys and research, Māori, Pacific, and Asian people are most likely to experience racism in a health setting, which may include their health condition not being treated or being misdiagnosed resulting in a future reluctance to seek medical help, and other health inequities (Espiner et al., 2021; Harris et al., 2013, 2018; MoH, 2006; 2019, 2023; Reid & Robson, 2006, 2007; Talamaivao et al, 2020). In the United States, racism was identified as a key reason health professionals referred greater numbers of non-white children, and their families, to child protection services where they were overrepresented in State care and data (Raz et al., 2021; Rebbe et al., 2022; Palusci & Botash, 2021). In Aotearoa New Zealand, racism also is a major factor for Māori children being overrepresented in State care both historically and in more recent times (Keddell, 2019; Kaiwai et al., 2020; OCC, 2020; RCAC, 2024; WO, 2020; WT, 2021). in 2023, Oranga Tamariki released data Identifying that "tamariki Māori are consistently more likely to be reported to Oranga Tamariki than non-Māori tamariki. In 2023, 82 of every 1000 tamariki Māori are reported to Oranga Tamariki, compared to 24 non-Māori tamariki" (OT, 2023c, p. 1). There is however little New Zealand research on whether a link between health professionals' racism and bias leading to more referrals to Oranga Tamariki exists. However, an Oranga Tamariki report (2024) documented that since the Hastings case (2019) there has been a reduction in Reports of Concern, including those from health professionals. "Health professionals have said

they lose trust in reporting to Oranga Tamariki and instead keep at-risk individuals on their books to "keep an eye on them" rather than freeing up resource for others" (Takada, 2024, p. 23).

In a hospital setting, there is a process, if a nurse or doctor has concerns about a newborn child, or a child that has been admitted, and a possible uplift, they will talk to their medical colleagues and, if necessary, follow up with a social worker based in the hospital or in the local Oranga Tamariki office. A Report of Concern may then be completed for an emergency uplift application. Depending on the length of hospital stay and the severity of their concern about the mother or the child's illness or injury, there may be limited time for a nurse or doctor to develop a relationship with the child and their family to understand and assess if reasons exist for the child to be removed from kin. Relationships are important in every type of public service practice especially in health and child welfare (Forrester et al., 2008; Munro, 2011). Professionals, such as social workers who build positive, honest relationships with parents in stressful situations may improve parental engagement with supportive public service and community services (Baginsky,2023; Dumbrill, 2006; Forrester et al., 2008; Greeno et al., 2017; Ward et al., 2014; Williams et al., 2018).

In seeking to uplift a child, Oranga Tamariki staff are supported by judges in the court system who make the process legal. Otago University's research (2020) into Family Court processes describes some general criticisms of the Family Court, which also applies to mothers who have had their children removed and seek to be reunited (Gollop & Taylor, 2020). The research identified improvements needed in Family Court processes, including mediation and court proceedings: less adversarial resolution of family disputes; better targeting of services and resources to support those children and people who most need protection; improved Family Court response to domestic violence victims; and more affordable and timely Family Court processes for people most in need (Gollop & Taylor 2020). These suggestions reinforced an earlier Ministry of Justice's Family Court review (The University of Auckland, 2011), which identified that current court processes were complex, uncertain, too slow, with a lack of focus on children and women in vulnerable situations. In

the Ministry of Justice-commissioned Victims Survey (MOJ, 2019), 83% of respondents felt the criminal justice system was not safe for them.

In late 2021 Oranga Tamariki updated the Memorandum of Understanding (2011) between Police and hospitals about working together, particularly in a care and protection situation. However, Oranga Tamariki has the statutory responsibility and is the lead in an uplift situation, regardless of which agency has made the referral (NZ Police, 2022). There is a historical mistrust and a lack of understanding between child protection workers and the police (Cross, 2005; Leckey et al., 2022 Te Whaiti & Roguski, 1998). In the Hastings case, it was a local police inspector who helped negotiate the peaceful outcome.

Health professionals such as the midwives and nurses have an obligation to uphold Te Tiriti and cultural competency in their profession, through the Health Practitioners Competence Assurance Act 2003 (Midwifery Council, 2011; Nursing Council, 2005, 2011). However, a Ministry of Health-commissioned report, led by Ngā Māia Māori Midwives o Aotearoa, said the midwifery profession needs "a commitment" to Te Tiriti; until this occurs, the voices of Māori are missing in the maternity and midwifery narrative for Māori mothers, babies and whānau (Muriwai & McClintock, 2020, p. 13). Research for the Midwifery School at Otago Polytechnic with nine Māori midwifery students found "the lack of Māori lecturers was highlighted by the Māori students as an issue in the programme. Without these role models, some students felt culturally isolated" (Patterson, J., & Newman, E., et al., 2017). This absence is important because a lack of role models was seen as a reason females dropped out of STEM subjects at tertiary level (Herrmann & Adelman et al., 2016). In Aotearoa, other research confirmed this finding with Māori midwifery students having "high attrition rates" and "they are under-represented in completion rates" (Tupara & Tahere, 2020a, p. 3)

A monocultural practice privileges Western knowledge while simultaneously marginalising Māori by disregarding critical mātauranga that is embedded in a te ao Māori world view (Eruera & Ruwhiu, 2016; Fletcher et al., 2014; Muriwai, et al., 2015; Reid, Taylor-Moore, & Varona, 2014).

The Aotearoa New Zealand Association of Social Workers requires social workers to uphold Te Tiriti in their practice, and the Social Workers Registration Board provides compulsory education standards modules on this (Walker, 2012). However, a 1992 Human Rights Commission report noted that many social workers "have no idea about working with whānau" (HRC, 1992, p. 97). Over thirty years later, similar comments were reflected many times in the Hastings case inquiry reports.

In Moyle and Tauri's research (2016) with Māori practitioners, a key theme was that many people working in Aotearoa New Zealand's child protection and youth justice sectors lacked the understanding of Māori cultural perspectives to work effectively as bicultural practitioners. This finding reflected that of other research (Love, 2000, 2002; Rimene, 1994).

Kiddell's study (2013) of social workers' decision-making in the best interests of the child found that decisions about children's care had a clear hierarchy of outcomes with a preference for family preservation over permanent removal. Despite inadequate resources and a challenging political environment, Hyslop (2017) stated that social workers in Aotearoa New Zealand work hard to protect the vision of child protection practice centred on family empowerment. However, both these researchers, since the Hastings case in May 2019, have written about uplifts being harmful and on the increase since the creation of Oranga Tamariki.

It can also be emotionally taxing or traumatic for child protection, and other professionals, involved in an uplift or intervening into a family's life, as having empathy is a requirement of the job (Kim & Stoner 2008; Maddock, 2024). Empathy can lead to compassion fatigue. Compassion fatigue, also known as empathic distress, is a personal distress response (Figley, 2002; Merk, 2018; Singer & Klimeck, 2014). This response affects practice and service to others, as compassionate practitioners can offer people more support than practitioners with empathic distress (Batson, 2009; Eisenberg, 2000). Compassionate fatigue and burnout are described as a 'carer' in a state of being unable to give (Bianchi et al., 2018, 2019, 2020; Boyle, 2011). Compassionate fatigue stems from the relationship of having to care for another person or people, whereas burnout relates to long-term dissatisfaction or conflict in the workplace (Bianchi & Romain, 2019; Maslach et al., 2001).

In 2006, Australian social work professor Dorothy Scott provided a rationale for why State child protection agencies are failing.

> Most child protection services in countries such as Australia and New Zealand have become demoralised, investigation-driven bureaucracies that trawl through escalating numbers of low-income families to find a small minority of cases in which statutory intervention is necessary and justifiable, with a potential for leaving enormous damage in their wake. The point has been reached in many places where we are exceeding the use of the State's coercive power to protect children without causing them further harm. (Scott, 2006, p. 1)

In March 2022, the existing Memorandum of Understanding (MOU) between Oranga Tamariki, Police and the Ministry of Health was extended to include iwi engagement "to develop localised procedures and plans to support parent(s) and whānau when decisions have been made that pēpi (baby) needs to be removed from their care" (Oranga Tamariki, 2023, p. 28). In 2022, the introduction of 7AA strengthened the actions to support this MOU and this action is described in more detail later in this chapter.

5.2 Family reunification after an uplift

Oranga Tamariki processes make it exceedingly difficult for parents and whānau to reunify with their child or children (OCC, 2020a) without having a lawyer or a strong advocate (OCC, 2020b). The Hastings case inquiry reports (see p. 172) identified that many of the parents and whānau, especially after a traumatic uplift, were not in a position to advocate for themselves or their children (OCC, 2020a, 2020b, 2020c; ONZ, 2020; WO, 2020; WT, 2021). Although informal hui, family group conferences, mediation and Family Court processes may be held, these avenues require the highest level of negotiation skills, access to all the information, and legal understanding. Once a child goes into care, Oranga Tamariki, acting in *loco parentis,* has superior legal power and resources (*OTA 1989*).

The Oranga Tamariki process expects the family or whānau to continue a relationship with the social worker and agency that removed their child. In Britain, Fergusson (2004) and Povey (2016)

describe how this power imbalance influenced adverse outcomes, particularly when the children and family were from low-income situations. Lee (2016) describes the power imbalance between parents and social workers in the New York child welfare process, with social workers making critical judgements of the parents' attitudes, and a high degree of parental compliance being required as key to reunification. In short, the parent or parents must be 'compliant' in this fraught situation.

> Demonstrating compliance is all-encompassing: a parent must attend everything one is sent to and be consistently on time, accept caseworkers' referrals and maintain a polite relationship with them, show commitment to children and a willingness to do whatever it takes to regain custody, agree with the caseworker's assessment of family problems, show that one has taken responsibility, and adopt attitudes that signal change. (Lee, 2016, p. 144)

In Britain, parents seeking to have their children in State care returned have six months after the Court's Care Order to get help and demonstrate their changed circumstances (*Children's Act, 1989*, c. 4). The onus is on the parents to show evidence of notable change, or they will lose their child to a permanent placement, often described as forced adoption. Norway has a similar programme (Fenton-Glynn, 2016).

Domestic and international research recognises that the removal of a child from their birth parents by family courts should not mark the end of professional support for parents' own rehabilitation (Broadhurst & Mason, 2013, 2017; Broadhurst et al., 2015; Cox, 2012; Grant et al., 2011). One Australian study of parents who had a newborn removed described the action as "sudden and unexpected, leaving them distressed and unsupported post-removal, with a growing list of requirements for them to see their baby or for restoration to be considered" (Trew et al., 2022, p. 549).

In the Children's Commission's report on Oranga Tamariki, Māori mothers who had children removed commented that Oranga Tamariki failed to provide ongoing support after the uplift (Office of the Children's Commission, 2020). The Independent Children's Monitor (ICM) report in 2022, which covered 1 July 2020 to 30 June 2021, raised concerns that whānau were not involved in

decision-making or not informed about events that were affecting their tamariki (children). Most of the complaints about Oranga Tamariki from whānau concerned poor communication, lack of fair treatment and unaddressed worries and insufficient support (Independent Children's Monitor, 2022). "The staff of service providers say that the system (bureaucracy, policies, and processes) gets in the way of tamariki Māori connecting with their whānau" (Independent Children's Monitor, 2022, p. 12).

The Whānau Ora Hastings case report (2020) mentioned many complaints from mothers that social workers do not have the skills to mediate in informal hui or family group conferences, or to bring in broader support, including whānau. If mothers, in particular, get upset about the uplift of their child or children, less empathic social workers may be dismissive of their trauma (WO, 2020). This was evident in the Hastings case, where the social workers did not acknowledge the mother's previous trauma related to her first baby being taken and how this affected her when she found out her second baby was also going to be taken, although support was in place (OT, 2019). In both the Hastings case and multiple uplifts researched, there was no sign of trauma-informed social work practice in action (WO, 2020). Yet, eight months prior to the Hastings case, Oranga Tamariki developed a staff resource on the trauma informed practice approach (Oranga Tamariki, 2018).

5.3 Outcomes for babies and children in State care

Research on early life stresses shows that a child's long-term separation from kin is traumatic and generates new and lifelong trauma (Ainsworth, 1978; Rojas-Flores et al., 2017; Rusby & Tasker, 2009) which may not be resolved on reunification (Bouza et al., 2018). This separation can lead to intergenerational cycles of family separation (Crittenden & Spieker, 2023).

Following an uplift, when the State acts in *loco parentis*, many children in State care do not receive a stable home, adequate care, protection and safety (Ashton, 2014; Atwool, 2012, 2021). Oranga Tamariki's statistics (2017) showed 70% of the 5,708 children having two or more placements and 575 children having five or more placements (OT, 2018). Experiencing multiple State care placements affects a child's well-being, safety, and ability to belong and form attachments, and

can cause academic and social difficulties (AAC, 2015; Pardek, 1984; Proch and Taber, 1985; Robinson, 2020; Ruban et al., 2007). Between 2013 and 2017 more than 40% of New Zealand children in State care had three or more caregivers during the previous five years (Keogh, 2018, para. 2). In a UK study, 6% of children in State care in Scotland had three or more placements in a year, which was fewer than for the rest of the UK (Bentley et al., 2016).

Between 2017 and 2021, 30 children and young people died in State care in New Zealand (OT, 2021). There is also evidence of children experiencing neglect and abuse (Erueti, 2018; Stanley, 2016). In one year (2015-2016), 85 children, including babies, experienced harm from State foster carers (OT, 2018). Māori children are more likely than non-Māori to be harmed in State care (OT, 2020; Stanley, 2016; Sutherland, 2019).

According to the Oranga Tamariki *Safety of Children in Care* report (2020), more children experienced sexual harm in non-kin placements than any other placement type (OT, 2020). Most of the victims sexually abused by non-family were girls. Overall, more girls than boys experienced harm in State care. Older children (over 10 years old) were harmed more frequently than younger children (Oranga Tamariki, 2019).

Apart from the risks of physical and sexual abuse, longitudinal data for children born in 1991 who had been in State care showed that by the time they were 21 years old, 90% were reliant on a government benefit, and over 25% were on a benefit to support a child (Crichton et al., 2015, p. 4). A majority (80%) did not have NCEA Level 2 (equivalent to O levels in the UK). By the age of 18, 20% of the cohort had had a custodial sentence and almost 40% had a community-based sentence (Crichton et al., 2015, p. 5). Such research supports the 'pipeline' from State care to State prison concept (Stanley, 2016).

In 2022, 40% of children in Oranga Tamariki's care were not registered with a general practitioner or a medical practice (ICM, 2022). The Independent Children's Monitor (ICM) report (2023) noted that Oranga Tamariki does not keep data on whether children in their care are having annual health or dental checks or whether their education needs are being met (ICM, 2023).

Evidence indicates that children who grew up in State care, as adults, have experienced far greater problems in relation to health, mental health, employment, education, homelessness, and criminal justice issues than the general population *(*MSD, 2016; Seba et al.,, 2015). The Royal Commission into Abuse in State and Faith-based Care's (RCASC) report, *Care to Custody: Incarceration Rates* (2022) analysed the interagency records of more than 30,000 people between 1950 and 1999. The research shows that being in State care disproportionately leads to state prison, with up to one in five, and in certain periods as many as one in three, of those children who had been in State care later serving a criminal custodial sentence (RCAC, 2022; Stanley 2016). In June 2020, Māori women aged 20-60 years were 61% of the women in prison with Māori men comprising 50% of the prison population.

From 2018 to 2023, the RCASC talked to survivors, researchers, and public sector agencies to identify the abuse in care between 1950 to 1999 and, where appropriate, from 1999 until the present day. This inquiry includes but was not limited to structural, systemic, or practical factors that caused or contributed to the abuse of individuals in State care or in the care of faith-based institutions (RCASC, 2022). The abuse inflicted on survivors of the State uplift practice is incorporated into that inquiry.

The total number of children abused in State care will never be known, due to insufficient historical data and non-reporting (Cook, 2020; Martin Jenkins, 2020; RCAC, 2020; TDB Advisory, 2020). Research indicates, however, that abuse in State care was systemic (ACORD, 1979; CLAS, 2015; Gallen, 2001; Mirfin-Veitch & Conder, 2017; OT, 2019b; RCASC, 2020, 2024; Roguski, 2013; Stanley, 2016; Confidential Forum for Former In-Patients of Psychiatric Hospitals, 2007; Von Dadelszen, 1987). There is considerable evidence that from 1950 to 2019 an estimated 17% to 39% of the 655,000 children in State and faith-based care were emotionally, physically and / or sexually abused by their carers (Martin Jenkins, 2020; RCAC, 2020; TDB Advisory, 2020), with Māori children being disproportionately represented. Further, it is also known that reported abuse is commonly lower than actual cases (NZ Crime and Victims Survey [NZCVS], 2020).

In 2015, the Office of the Children's Commissioner's first State non-kin foster care and youth institutions report, entitled *State of Care,* reported that it "could not say conclusively whether children are better off as a result of state intervention, but the limited data we do have about health, education, and justice outcomes is concerning" (OCC, 2015, p. 5).

In New Zealand research on the parents of 171 children notified to child welfare and / or placed in State care, 49% of the mothers and 41% of the fathers had been involved with child welfare as children or young people (Connolly et al., 2007). Many of the parents of children uplifted by the State in recent years had been abused in State care as children (Crichton et al., 2015). The voices of tamariki Māori and their whānau were not heard in decisions about their care by the State between 1950 and 1999 (Savage et., 2021) which is still an issue for children in State care and their whānau in 2022 (Independent Children's Monitor, 2022).

Between 2021 and 2023, evidence shows that children and young people in Oranga Tamariki care did not have their basic needs met, there was no reduction in findings of abuse and neglect, and the agency continued to not meet the minimum standards of care (Controller and Auditor-General, 2024; ICM, 2022, 2023, 2024). This evidence indicates that the State care agency is still not ensuring that children and young people in State care are safe from harm and have their basic human rights met.

5.4 Reasons given for uplifts

The Oranga Tamariki Evidence Centre's report (2023) examined the 10-year data on children in State care to the period 31 March 2020, of which uplifted babies were a minority. The following factors resulted in a significantly higher chance of Oranga Tamariki being involved in a family's life.

> Lower parent income, parent history with care and protection, and / or recent correctional history, and / or being recorded by Police as a crime victim, ED visits, especially injuries for children under five years old, and for teens recent extended school truancy and stand-downs and mental health treatment and substance issues. (OT, 2023, p. 3)

In comparison, the six main reasons New Zealand grandparents took full-time care of their grandchildren were “drug or alcohol addiction, domestic violence, family breakdown, neglect, parent unable to cope and alcohol abuse” (Gordon, 2016, p. 3).

Findings from the New Zealand Family Violence Death Review Committee (2020) showed that agencies blamed women for failing to protect their children while failing to hold men responsible for their violent behaviour (FVDRC, 2020). Male violence towards their female partners “is a risk factor for fatal family violence against children” (FVDRC, 2017, p. 10). Three-quarters of male offenders convicted of the deaths of children between 2009 and 2015 were known to Police for abusing the mother of the child and or previous female partners (FVDRC, 2017, p. 10). Family violence against women is still common in Aotearoa New Zealand and men account for around 90% of family violence arrests (Mackenzie, 2009). In the year to June 2023, Police recorded 177,452 family harm investigations, which was a 49% increase from 2017 (NZ Police, 2023). Violence in the home is a key reason cited for uplifting babies and children (Oranga Tamariki, 2023; Bald, Chyn, Hastings, & Machelett, 2016).

Children are often at the frontline of violence and harm in society (Hammarberg, 1990). In Aotearoa New Zealand, the Oranga Tamariki Act (1989) defines child abuse as “the harming (whether physically, emotionally, or sexually), ill-treatment, abuse, neglect, or deprivation of any child or young person” (OT Act, 1989, s. 2). In New Zealand hospital admission data from 2009 to 2013, injuries for babies less than one year old were highest in the age group to 2 years (Simpson et al., 2014, p. 390). The impacts of being abused as a child or exposed to maltreatment has long-term effects into adulthood (Fanslow et al., 2021; Hashemi et al., 2021; Telfar et al., 2024).

Keddell (2019) found that although there was a reduction in hospitalisations for child physical abuse and reduced reports of concern that were substantiated, entries into care increased. This increase was linked to a 33% increase in babies coming into care and fewer children under 10 leaving State care. The number of young Māori in State care increased, while the numbers of other groups in State care remained the same or lessened.

While the incidence of child abuse had decreased since 2014, the Children's Commissioner's report (2020) stated that State actions to remove Māori babies were twice or three times more common than for non-Māori babies. For example, in 2019, one Māori baby in every 150 Māori babies was taken into care, compared to one in 750 non-Māori babies. The rate of Māori babies (three months old and younger) being taken urgently into State care doubled between 2010 to 2019, while the rate for non-Māori children stayed the same (OCC, 2020).

Keddell (2019) identified that social workers obtained more legal orders for unborn babies to implement removal than for babies after their birth. The orders were used to uplift a child rather than to negotiate the parents' agreement to bring babies into care. However, parents who have had an experience of State care themselves, or have knowledge of abuse in State care, may be wary and reluctant to enter into such an agreement. Evidence of the increase in orders was also supported by the Ombudsman's report into Oranga Tamariki in 2020 (ONZ [Boshier], 2020). Oranga Tamariki statistics (2023) show that between 2013 and 2023, 13,005 children were taken into care urgently (using Sections 39, 40 or 78 of OTA 1989) by Oranga Tamariki or Police (OT, 2023c).

There seems to be a pattern in the increase or decrease of children entering State care. The Oranga Tamariki *Analysis of the decrease in the number of children entering care* report (2021) identified that the decrease in entries to State care via without notice uplifts (s. 78) is linked to key events such as the media and public and political attention given to the Hastings case in May 2019, legislative changes such as the 2019 Section 7AA, which was revoked by the coalition government in April 2025 (NZ Parliament, 2025). Oranga Tamariki practice changes, such as greater oversight of reports of concern for Māori babies by practice leaders and a new requirement for managers sign off, may be driving the decrease. This pattern reinforces research findings from 2019 and 2022 (Keddell, 2019; Keddell et al., 2022).

5.5 Reports of Concern – anonymous, genuine or vexatious

Anyone in Aotearoa New Zealand worried about a child or young person can make a Report of Concern to Oranga Tamariki or the Police and this can be anonymous. Both agencies have the

statutory power to intervene in one of families' most fundamental relationships—the right for parents to decide how to take care of their children.

In the US, anonymous reporting is the norm (Adams et al., 1982; Cecka, 2014) with Cecka calling for the practice to be abolished. The practice of anonymous reporting is the norm in the United Kingdom (Dudley, 2020) and in all states of Australia (as illustrated on the respective State websites). The Government's *White Paper on Vulnerable Children*, *Volume 2* (2015) concluded that "The reality is that the majority of notifications to Child, Youth and Family (currently Oranga Tamariki) don't result in a finding of child abuse or neglect" (MSD, 2015, p. 11).

According to Oranga Tamariki statistics (2020), in 2004, there were 1,112 reports about 970 babies (0-3 months). By 2020, this had grown to 3,034 reports about 2,534 babies (0-3 months*).* A *Cumulative Prevalence of Maltreatment Among New Zealand Children* report (Rouland & Vaithianathan, 2018) which followed the 55,443 children born in 1998 until 2015, identified that one in four children had been reported to child protection services, although one in 10 children had suffered abuse or neglect (Rouland & Vaithianathan, 2018).

In the 12 months to 31 March 2023, there were 69,500 Reports of Concern made to Oranga Tamariki, which led to 37,800 assessments or investigations (Oranga Tamariki, 2023). Earlier 2019 research flagged the elevated level of reporting with 23.5% of New Zealand children, and one in two Māori children before the age of 18, likely to be reported to Oranga Tamariki for safety or well-being concerns (Maessen & Wilson, 2019, p. 310).

In the government's *White Paper on Vulnerable Children*, *Volume 1* report, it states "Children already known to care, and protection agencies start at an enormous disadvantage to other children" (NZ Government, 2012b, p. 17).

Reports of concern trigger an initial assessment by a social worker, who works with the referrer to understand the concerns and perceived needs and risks for the child. After this initial assessment, the social worker can decide to take no action, provide advice, make a referral for support from another service, or undertake a statutory investigation under the Oranga Tamariki Act

1989 (WT, 2021). However, research (OCC, 2020) found that 53% of social work assessments of Māori babies at 0-3 months resulted in unsubstantiated findings. Rates of unsubstantiated findings for non-Māori are 8%-9% per cent higher than for Māori (OCC, 2020).

Coming from a family with a history of violence can mean the family members become under scrutiny from public agencies when they have children (Savage et al., 2021; Stanley, 2016). There is much evidence that family violence can be intergenerational, with many parents or guardians who inflict violence on children in their care being themselves maltreated as children (Duncanson et al., 2009; Fergusson et al., 1996, 1997; Hillis et al., 2016; Norman et al., 2012; Simpson et al., 2016; World Health Organisation, 2022) and many received this abuse in State care (RCAC, 2024). However, it is important to note that not all people who come from a household with violence will repeat this pattern (E Tū Whānau, 2023; Lünnemann, et al., 2019; O'Neil et al., 2016).

5.5.1 Mandatory reporting and greater reports of concern

Kempe's *The Battered Child Syndrome* (1962), which identified child abuse symptoms, was highly influential with social workers and health professionals in the 1960s and 1970s. Kempe's work influenced Aotearoa New Zealand's public health, welfare and justice agencies, including Plunket practices and public violence prevention campaigns such as *Alternatives to Smacking* in 1998 and *Never Shake a Baby* in 2009 (Dalley, 2011, 2018). Beth Wood (2004), one of the leading campaigners for the repeal of Section 59 of the *Crimes Act 1961*, the right to hit children, argued that changing the law was not about "banning smacking" but rather "about making Aotearoa New Zealand a place where everyone knows it is not okay to hit children" (Wood, 2004, p. 31).

Unlike the US and Australia (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017; US Department of Health & Human Services, 2019), Aotearoa New Zealand does not have mandatory child abuse reporting by government and NGO professionals, except in suspected child sex abuse cases (MoH, 2021). However, all hospital and community health services have a standardised policy that says staff must report suspected child abuse (Kelly & Webb, 2016).

Since 2016, under the Children's Act 2014, all schools and kura (Māori language medium schools) must have a child protection policy. Oranga Tamariki and Police received more reports of concern after introducing these policies (Rouland & Vaithianathan, 2018).

In November 2021, five-year-old Malachi Subecz died as a result of physical abuse by his Oranga Tamariki-approved caregiver, even though whānau had made reports of concern and five other agencies were involved but did not investigate. A report on this case by former Director General of Health, Dame Karen Poutasi, followed in 2022 and was critical of Oranga Tamariki and other agencies. In August 2024, The Independent Children's Monitor following up the Poutasi report's recommendations found that "tamariki (children) in similar situations to Malachi are any more likely to be seen, or kept safe by the system, than they were when Malachi died" (ICM, 2024, p. 2). Poutasi's (2022) report recommended that "there should be mandatory reporting of risk of abuse to Oranga Tamariki from professionals and services working in the child protection field, including across health care, welfare, education, children's services, residential services and law enforcement. These categories of frontline workers with children should be 'mandated reporters' and identified in legislation" (Poutasi, 2022, p. 41).

Mathews and Bross (2008) say that a society without a mandatory reporting system is far less able to protect children and help families as many child abuse cases will remain hidden. Conversely, mandatory reporting encourages increased awareness of child abuse, resulting in an increased number of reports of concerns made to child protection services, particularly in the first few years following legislation (Edleson et al., 2007; Keddell, 2022; Mathews et al., 2016; Rouland & Vaithianathan, 2018). However, with an already high number of children in State care, this is a concern in Aotearoa New Zealand. Otago University Associate Professor in Social Work, Emily Keddell, tweeted in 2022 that "we already have reporting policies and professional obligations to report for everyone who works with children" and that "mandatory reporting pulls the focus and resources of a child protection system away from prevention and towards reactivity" (Keddell, 2022, p. 76), which is a very sound rationale for not having mandatory reporting In Aotearoa New Zealand.

One US example which illustrates Keddell's concern was the introduction of mandatory reporting legislation in Minnesota in 1999, which included the occasional inclusion of exposure to family violence as child abuse and neglect and statutorily reportable. This legislation resulted from increased awareness of the link between family violence and child abuse and neglect and concern for the welfare of children exposed to violence. The result was a dramatic increase in the number of referrals to child protection services, mainly from Police who responded to reports of family violence and, as mandated, reported the family (Vieth, 1998).

The UK has no legal requirement for those working with children to report known or suspected child abuse or neglect but has statutory guidance in Working Together to Safeguard Children (2018). A UK House of Commons briefing paper (2020) discussing mandatory reporting states that although reporting child abuse is not a legal requirement in England, unlike Wales, "anyone who has concerns about a child's welfare should make a referral to local authority children's social care and should do so immediately if there is a concern that the child is suffering significant harm or is likely to do so" (House of Commons, 2020, p. 3).

Other countries with mandatory reporting legislation include Australia, Brazil, Canada, Denmark, France, Hungary, Ireland, Israel, Norway, and the United States (Foster, 2020). New Zealand has followed the UK approach, where police officers and social workers are legally obliged to report abuse that is disclosed to them. A 2012 Government report describes the New Zealand context where "the vast majority of New Zealand children who are seriously abused are already known to government agencies" (MSD, 2012a, p. 7). In 2018, 79,200 children (or 7% of the population) had a family violence notification with 1% of the notifications resulting in substantiated findings (OT, 2020). Australian researchers (2014) found that around one in every five or six of the concerns notified to statutory child protection departments in the previous decade were substantiated; meaning the great majority were not (Hayes et al., 2014, p. 121) which reflects Keddel's point (2022) on the previous page about child protection resources being wasted.

5.5.2 Risks and fears - anonymous or vexatious reports of concern

For families, having contact with State child protection services is risky (Scott 2006). There is a risk in taking anonymous complaints, and there is a risk in taking complaints from ex-partners or parties who may be unhappy with the custodial parent. In the Law Foundation (2020) research *Parenting Arrangements After Separation Study*, interviews with the parents and caregivers revealed their distress at "being on the receiving end of without notice applications, particularly if they considered such applications to be based on lies and false allegations and / or to be a means of control and manipulation by their former partner" (Gollop & Taylor, 2020, p. xiv).

The Whānau Ora inquiry (Whānau Ora, 2020) into Māori babies uplifted by Oranga Tamariki described whānau as being fearful of someone making a report of concern against them. Whānau reported living in fear of a Report of Concern because it can come from a wide range of sources – "practically from anyone or from anywhere" – and can easily allow for undetected or unexamined racial bias or prejudice to determine its impact and consequences for whānau and tamariki (Whānau Ora, 2020 p. 10).

Māori are justified in their fear of anonymous complaints, and the fear of a complaint coming from anyone is genuine. Oranga Tamariki statistics state that "91 of every 1,000 tamariki Māori are reported to Oranga Tamariki, compared to 28 of every 1,000 non-Māori children" (OT, 2022, para. 5). Oranga Tamariki's website had the following message in the Reports of Concern section, which evidences the fear of a complaint coming from anyone.

> About 10 people contact us every hour with concerns about a child. Over the past year, we have averaged 240 calls and emails every day from the community – doctors, teachers, neighbours, and Police. Concerns relate to drug and alcohol addiction among parents, neglect, physical, sexual, and emotional abuse of children, and family violence. From the reports of concern we receive, we make 100 assessments each day. Of these assessments, there is the equivalent of two classrooms of children who we have never had contact with before. (OCC, 2020, para. 2)

It raises a red flag that "two classrooms of children" whom Oranga Tamariki previously had no history of working with, their parents, or whānau, are now known about due to the "assessments" and are now in the State child protection system. Keddell (2019) examined the increasing use of algorithmic 'risk' tools in child protection decision-making which, like human decision-making, can also result in flawed decision-making and inequities in decision outcomes.

> The right to be treated as an individual is threatened when statistical risk is based on a group categorisation, and the rights of families to understand and participate in the decisions made about them is difficult when they have not consented to data linkage, and the function of the algorithm is obscured by its complexity. The use of uninterpretable algorithmic tools may create 'moral crumple zones,' where practitioners are held responsible for decisions even when they are partially determined by an algorithm. (Keddell, 2019, p. 3)

5.6 Legislation and policy supporting children going into State care

Child protection is an area of public law where authorities may intervene in family settings because of an allegation of harm or significant risk of harm to a child (Beck, 2006; Titterton, 2017).

According to Gilbert, Parton, and Skivenes (2011), there are several essential components of child protection systems that include the pervasive notion that child abuse is typically perpetrated by dysfunctional kin, requiring the State's adversarial response by using its legal and judicial coercive powers to intervene and punish the kin. In Aotearoa New Zealand, there has been much criticism of the misuse of 'urgent' legislation processes such as 'without notice' orders to take children, especially Māori babies and children, into care without kin participation. This lack of family inclusion in child protection legislation and Court processes is also an issue in Australia, especially with Aboriginal and Torres Strait children being taken into State care (Ross et al., 2024).

5.6.1 Oranga Tamariki Act 1989 and uplifts

Babies and children come under the custody of Oranga Tamariki's Chief Executive under the provisions of the Oranga Tamariki Act 1989, (OTA 1989) including:

- Agreement (Sections 139 and 140)
- Emergency action (Sections 39, 40, 42 and 48) - requires a Court decision for warrants
- Court order (Sections 78, 101, 102, 110(2)(a), 110AA, 238(1)(d), 311 and 345) - requires a Court decision for custody orders (OTA 1989).

Under Section 39 of OTA 1989, a District or Family Court judge can grant a 'place of safety' warrant to an Oranga Tamariki social worker, on behalf of the Chief Executive, or the police officer who makes an application. The warrant is granted if the Court officer believes there are "reasonable grounds for suspecting that a child or young person is suffering, or is likely to suffer, ill-treatment, neglect, deprivation, abuse, or harm may issue a warrant authorising any constable, either by name or generally, or the chief executive, to search for the child or young person" (OTA 1989, s. 39A). The uplift of the child on the basis the child is "likely to suffer" is Oranga Tamariki or the police being proactive but the "reason" for this uplift must "convince the judge there's no other way of protecting the child" (Community Law Centre, 2023, para. 3).

The function of executing a warrant issued in the name of the Oranga Tamariki Chief Executive may be performed by a social worker or any other person such as a public servant authorised under a delegation to carry out that function (Oranga Tamariki Act, 1989, s. 7C).

This warrant gives these agency duty bearers the power to enter a child's home, or any dwelling or a hospital, to conduct safety checks or to search for the child (OTA, 1989, s. 39). This authority is used when uplifting a child from the hospital or their home. For social workers and Police wanting to take emergency action to remove a child, a District Court or Family Court Judge can grant a Section 78 custody order based on their application (OTA, 1989, s. 78). These custody orders are implemented in two ways.

On notice (also called 'with notice') – The application is served on the respondents (usually family or caregivers) before it is granted by the court. An application can be filed to reduce the time the respondents have to file a notice of intention to appear. This means the respondents have only a limited opportunity to reply to the application (usually 1-3 days) or get legal advice (MoJ, 2022).

Without notice – An urgent application considered by the judge before the documents are given to the other person (the respondent) (MoJ, 2022). The respondent is not informed about the application before it is granted by the court so does not have time to get legal support. If the court supports the application, it usually grants the order on the same day (OT, 2020). In 2018, 820 children were taken into care using a without notice application.

Since the Hastings case in 2019, Section 7AA of the Oranga Tamariki Act 1989 which outlines the duties of the Oranga Tamariki chief executive in relation to te Tiriti was strengthened in regard to mana tamaiti, whakapapa and whanaungatanga (kinship), including greater whānau participation in decision-making and agency support for whānau Māori to care for their tamaiti or tamariki to prevent the need for their removal from home into care. However, the ACT Party led the coalition government's successful repeal of Section 7AA on 3 April 2025 (NZ Parliament, 2025) calling for "colourblind, child-centric state care " (ACT website, 2024, para. 4) claiming that under Section 7AA Māori children have been removed ['reverse uplift'] "from a loving foster home [non-kin not of the child's culture] to be placed with relatives deemed more culturally appropriate," (Chhour, 2024). In August 2024, the Māori relatives referred to in one case finally broke their silence saying, "If Oranga Tamariki did its job properly, this wouldn't have been a reverse uplift. If Oranga Tamariki will stop offering people *Home for Life* while other families are fighting in the background to try to save their family, there would not be a 'reverse uplift'," (Maniapoto, 2024).

Section 4 of the OTA 1989 mentions Māori and extended kin, and the Children's Convention (1989) through "the well-being of children, young persons, and their families, whānau, hapū, iwi, and family groups," including acting in the child's or young person's "best interests." Section 4A sets out the well-being and best interests of a child or young person as the first and paramount consideration in the application of most of the Act. As discussed in Section 4.8, the best interests of the child conflicts with viewing the child, not only as an individual but within the collective family. However, there is no legal responsibility in the OTA 1989 to support the parents or whānau during or after an uplift. This Act focuses on the child, but less on the child in the context of their family.

Oranga Tamariki social workers in uplift cases understand that they have no responsibility to the mothers or whānau after the baby has been removed (OCC, 2020); nor did the role of the Children's Commissioner have any legal responsibility for the whānau, which makes the Oranga Tamariki Hastings case inquiry into babies being uplifted significant (OCC, 2020a, b, c). These legislative restrictions, supported by organisations with a narrow focus on individuals rather than their families, enable the child to be viewed in isolation from their parents and whānau and does not support strengthening families or family reunion (Iwanek, 2018).

5.6.2 State child removals and Section 78

In Aotearoa New Zealand, removing a child from its mother starts with Oranga Tamariki receiving allegations (internally, or from others) that harm may occur or be occurring to the child. Using the emergency uplift process is quick, with the Family Court generally not viewing any evidence of harm or evidence of an investigation. Since 1989, Oranga Tamariki social workers, with the support of their managers, have applied for an urgent *ex parte* (legal term for *without notice*) removal of the child or children through an uplift under Section 34 of the Oranga Tamariki Act 1989 (now sec. 74 Rule 34(a): amended on 1 July 2019).

Ministry of Justice data showed that over 94% of all Section 78 orders for 2017/18 and 2018/19 were granted on the basis of without notice applications by the Family Court (MoJ, 2021). This urgent practice has meant that Oranga Tamariki does not need to advise the mother, or other parent, or get broader input from extended whānau or community support. Often, the first parents know about the uplift is when the social worker arrives with police or 'hospital security as backup at the hospital' to remove the child.

If a social worker thinks a statutory investigation is necessary, the process is to complete a Child or Family Assessment or a Child Protection Protocol Investigation. Both are informed by the Oranga Tamariki Tuituia Assessment Framework, which must consider the needs and strengths of tamariki, their parents and caregivers, and the whānau, social, cultural, and environmental influences surrounding them. However, Oranga Tamariki staff consistently failed to understand and

apply relevant legislation and policy (Ministry for Children - Oranga Tamariki, 2019). Further, the Ombudsman found, that rather than apply this process or early intervention and other available preventative tools and processes, Oranga Tamariki staff resorted in the first instance, "to removing these pēpi without notice" (Ombudsman, 2020, p. 19).

Oranga Tamariki without notice applications, before 2019, were quickly approved by the Family Court, without much consideration. In 2018, 820 children entered care through the urgent without notice application and 959 children through section 78 (OT, 2021, p. 31). Oranga Tamariki long-term data shows that between 2013 and 2023, 6,622 children entered State care via the urgent uplift process and 3,036 were babies under 12 months (OT, 2023, p. 1).

Family Court judges dealt with urgent without notice applications remotely, using an electronic platform called *eDuty*. In July 2019, following the Hastings case and changes to the Oranga Tamariki Act 1989, Principal Family Court Judge Moran determined that this practice should stop. Judges reading the cases on a screen often had little information about the people involved and made quick, poorly considered decisions on whether the situation met the criteria (*One News*, February 4, 2020). In Oranga Tamariki 2021-2022 data, Māori babies were still more likely to be granted a Section 78 order on a without notice basis (62.5%) than for non-Māori (41.2%) (Oranga Tamariki, 2023). As a result, since 2022, Section 78 (previously section 34) applications are now dealt with by local judges in a more considered way to see if there are other ways of dealing with the situation than separating the mother and child. The decisions are made within 24 hours.

When a baby is uplifted under Section 78, various professionals are involved, including social workers, hospital staff or midwives, Oranga Tamariki and Family Court lawyers, counsellors, and judges. These parties are supposed to be unbiased and work in 'the best interests' of the child. However, research indicates structural or institutional racism and bullying in sectors of public health (Harris, 2018; Talamaivao, & Harris, 2020; Waitangi Tribunal, 2019), social welfare (Office of the Children's Commissioner, 2020; Savage et al., 2021; WAI-2015, WO, 2020), police (Maxwell & Smith,

1998), and justice (JustSpeak, 2020; MoJ, 2009). That is, every area involved in uplifts (Waitangi Tribunal, 2019).

5.6.3 Subsequent child's removal and section 18

In the Hastings case, a landmark case in child welfare, the rationale for removing the baby was that the mother had a previous baby removed by Oranga Tamariki when she was 17 years old. This case brought to light the 'subsequent children's provisions of the Oranga Tamariki Act (OTA, 1989, s. 18a-d), which stipulate that if a parent previously had a child permanently removed from their care, the next or 'subsequent' child could be uplifted.

Young mothers who have a child removed may cope with grief by getting pregnant soon after to replace the lost baby (Grant et al., 2011; Iwanek, 2017; Novac et al., 2006). These subsequent children's provisions required Oranga Tamariki to either apply to the Family Court for a care and protection order or to apply for confirmation that a child is safe to remain with their parents. The onus of proof was put on parents to prove they were safe rather than Oranga Tamariki establishing that the child was unsafe. Most parents in this situation are not coming from a position of strength, and mobilising a defence in the face of trauma is likely to be complicated.

In the hospital uplift situation, the separation of the mother and their newborn baby by Oranga Tamariki occurs in the safe and secure confines of the hospital. Generally, no crimes have occurred towards the child, so the decision to remove the baby is based mainly on either historical circumstances or a prejudgement that abuse or lack of care is likely to be an issue. If harm had already occurred towards the child, uplift would be an automatic police-led matter.

This urgent practice, like Section 78, has meant that Oranga Tamariki does not need to give prior notice to the parents or get broader input from extended whānau or community support. The first parents often know of the application when the social worker arrives with the police at the hospital.

In August 2020, following the Hastings case and findings of the inquiry reports, the Government announced that the 'subsequent children' provisions in the OTA 1989 would be

repealed in 2021. The then Minister of Oranga Tamariki, Tracey Martin, said about the subsequent children's provisions, "interpretation of the current law has meant that some children may have been unnecessarily traumatised and kept apart from their parents" (NZ Parliament, 2020, para. 2).

The Chief Ombudsman's report*, He Take Kōhukihuki, A Matter of Urgency* (ONZ [Boshier], 2020), found that Oranga Tamariki had routinely taken newborn babies without whānau consultation, using emergency, without notice, court orders as a routine practice. Since December 2022, the Oranga Tamariki Amendment Act 2022 (sections 18A to 18D) retains the subsequent child's provisions only "where the parent has a conviction for the murder, manslaughter or infanticide" of a previous child in their care" (OT, 2023, para. 5).

The uplift practice of subsequent babies and children uplifted from the same mother is reported in Australia (Hinton, 2018; Taplin & Mattick, 2014), Canada (Novac et al., 2006), the United Kingdom (Alrouh et al., 2019; Broadhurst et al., 2017, 2018; Roberts et al., 2018), and the US (Grant et al., 2014; Larrieu et al., 2008; Ryan et al., 2008).

Between 2014 and 2017, Lancaster University research examined the court files of 65,000 British mothers and conducted interviews with 72 mothers who had had more than one child removed (Broadhurst et al., 2017). The study found that over 11,000 mothers had more than one child removed between 2007 and 2014. Findings revealed that 40% per cent of the mothers who had a child removed had themselves been in State foster care or State children's homes (Broadhurst et al., 2017). In Aotearoa New Zealand 48% of pregnant mothers of Māori babies taken into state custody before birth had been in state custody themselves compared with 33% of non-Māori (OCC, 2020c, p. 98).

In the United Kingdom, 82% of mothers who had subsequent children removed were white or white British (Broadhurst et al., 2017, p. 21). However, in the countries Britain colonised, the mothers were largely Indigenous (Human Rights and Equal Opportunities Commission, 1997; Firpo & Jacobs, 2018; OCC, 2020) as illustrated in Aotearoa New Zealand.

5.6.2 Uplift placements and section 7AA

In 2019, and following the Hastings case, the then Government made an amendment to the OTA 1989 requiring Oranga Tamariki's Chief Executive to recognise Te Tiriti by reducing the number of Māori children in State care and to support Māori children staying with wider kin, hapū, and iwi (OTA, 1989, sec. 7AA). Section 7AA is relevant when Māori children are uplifted and placed with non-Māori non-kin carers. There have been several high-profile cases of this, such as the 'Moana' case, where a young Māori child was uplifted from her whānau and placed for several years with Pākehā foster carers. After the Hastings case, some of the Māori children's placements with non-Māori non-kin caregivers were reviewed by Oranga Tamariki with the intention to place the children within their wider kin, which was not considered at the time of the uplift. The foster carers in the Moana case opposed the decision and took it to court, where Family Court judge Peter Callinicos supported their claim; Oranga Tamariki supported by the child's kin, appealed this decision to the High Court and then the Supreme Court.

The ACT conservative political party, a coalition partner with the National Party-led government after the October 2023 elections, sought to overturn Section 7AA's "race-based decision-making" after first raising this in 2022 (Chhour, 2024, para. 8). On 3 April 2025, the dominant three-party coalition government passed the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill, without any consultation with Māori or any public consultation. The Governor-General signed the bill into law on 7 April 2025 (NZ Parliament, 2025).

5.6.2 Care of Children Act 2004 and uplifts

In Aotearoa New Zealand, babies and children can also be uplifted by arrest through the Care of Children Act 2004 (Sections 72 and 73). This normally happens after there is parental separation which ends in conflict and the conflict is resolved by the Family Court approving a parenting order. The parenting order (formerly called a custody order) determines who looks after the children daily, and where the other parent has access to the child if it is not shared parenting.

If one parent breaches a parenting order, a social worker or police officer may 'arrest' the child using 'reasonable force.' If the child doesn't wish to comply, the police can nonetheless deliver them to the eligible caregiver or authority named in the warrant (*Care of Children Act 2004*, Section 72).

This process of 'taking' or uplifting the child "using reasonable force" can be considered an 'arrest' of the child. University of Auckland law professor, Leonetti (2021, 2023), states this State practice is not in the best interests of the child, who does not have input into the decision-making. If the child does not want to go to the other parent, and they may have very valid reasons, the parent they are with is put in the position of forcing their child to go to the other parent. If the parent does not wish to do so, or cannot make the child go, the Court may arrest them and fine that parent.

Under Section 68 of the Oranga Tamariki Act 1989, the judge may remove the parent's access to the child. It is a criminal offence to intentionally breach a parenting order without a reasonable excuse. A person who does this can be jailed for up to three months or fined up to $2,500 (COCA, 2004, s. 78).

A warrant can also be made as an urgent 'without notice' application. Between 2020 and 2023, 40,486 of these Family Court applications were without notice (63% of total applications in the same period), indicating there is a concerning issue when the relationships of separated parents turn oppositional and seek Family Court action (MoJ, 2023b, p. 1).

5.7 Public service duty-bearers – context

In Aotearoa New Zealand, the Public Service Act 2020 (PSA, 2020) identified that a "fundamental characteristic of the public service is acting with a spirit of service to the community" (PSA, 2020, Section 3.1). In this Act, the term 'human rights' appeared 31 times, and the term 'Treaty of Waitangi' appeared 1,348 times. This Act operationalises Te Tiriti and compliance is required with the Bill of Rights Act 1990, and the Human Rights Act 1993 (PSA, 2020).

> The principles in the Public Service Act 2020 do not explicitly reflect any human rights agreements or Te Tiriti 1840. Instead, the public sector principles, public servants or State

> employees are to be “politically neutral, free, and frank advice, merit-based appointments, open government, and stewardship”. (PSA, 2020, s. 12)

While the Act grants public servants human rights, the Human Rights Commissioner pointed out that the Act does not require public servants to respect and work for the rights and freedoms of everyone else (Hunt, 2020). With the State being a human rights duty-bearer, this omission could allow for the UNCRC to continue to be ignored in the State uplift practice. Public sector chief executives also have Te Tiriti responsibilities, however researchers reviewing public sector chief executives recruitment and performance review processes from 2000 to 2020 found no inclusion of Te Tiriti engagement or compliance (Goza, Came & Emery-Whittington, 2021).

In the 21st century, public servants sign up for a ‘code of conduct’, which identifies appropriate values and behaviour for working in the public service. The Public Service Commission issues this code. Social workers, like doctors, nurses, midwives, and lawyers, also have separate professional codes of ethics and standards, which they sign and are unique to each profession. These professionals are expected to abide by human rights and other legislation that outlines the care of children and adults. However, the abuse of children in State care and in Lake Alice Psychiatric Hospital are examples of professionals operating to different values and standards or just following orders (RCASC, 2022, 2024; Smale, 2021a, 2021b, 2024; Sutherland, 2019, 2020, 2021). Although thousands of children were abused in State care from 1950-2019 (MartinJenkins, 2020), few of the State’s individual public servants, or teams of public servants, involved in State care have faced Court charges for abuse RCAC, 2024; Rouland et al., 2019; Savage et al., 2021; WT, 2021).

5.7.1 Organisational inequities and discrimination

> How many of the structures, institutions and practices established, it is said, to "protect" children have actually done so? (Freeman, 1994, p. 324)

The quote above is telling, because it describes child protection structures, institutions and practices as unable to protect children. There are fundamental problems in many agencies. Organisations’ hierarchy and workforce can be both gendered (Jeff & Collinson, 2018), with female-

dominated occupations being lower paid than those dominated by men (MfW, 2022), and also sexist, racist and bullying (HRC, 2022). In a Human Rights Commission survey of 2,512 workers, one in three workers (30%), mainly women, had personally experienced sexual harassment in the last five years (HRC, 2022, p. 10).

In Aotearoa New Zealand's public service, Pākehā made up the highest proportion of State employees (State Services Commission, 2019). As at 30 June 2023, there were 1,361 senior leaders in the Public Service (defined as the top 3 tiers of managers, with chief executives being tier one), 78.3% of these were European and 55.9% of the three tier leaders were women (Public Services Commission, 2024). Data on 50,000 State sector employees was reviewed to identify patterns of pay disparities as well as to measure the gap between policy and practice. Although all State sector organisations have had EEO programmes since 1998, Māori and Pacific staff were not being appointed to the top tiers of the public sector, and to higher salaries, which fits with definitions of institutional racism (Came, 2019; Came et al., 2020). An earlier State Services Commission (SSC, now PSC) literature review (2010) referred to this institutional racism as often being due to unconscious bias.

> The social psychology literature emphasises the innate tendency for a dominant group to tend to appoint people like themselves and listen more to people like themselves – often being unaware of the bias involved. (SSC, 2010, p. 10)

Other evidence, such as the Stanford Prison experiment (Zimbardo 2007), the night shift at Abu Ghraib (Snow, 2009), Arendt's report on the '*Banality of Evil*' (Arendt, 1963) and New Zealand's Lake Alice (Every-Palmer & Sutherland, 2023; Smale 2024) showed that in extreme circumstances, situational forces and group dynamics where a person is influenced by the group they identify can result in individuals adopting behaviours such as othering or stereotyping people, a fear of speaking out or challenging authoritarian figures, or systems that minimise others to legitimise domination and violence and torture (Arendt, 1963; Every-Palmer & Sutherland, 2023; Smale, 2024; Snow, 2009; Zimbardo, 2007).

Aotearoa New Zealand has high rates of workplace bullying and harassment. Human Rights Commission [HRC] research (2022) shows that racial harassment had been experienced in the past five years by 52% of Māori, 62% of Pacific and Asian workers, and 61% of disabled workers. Respondents reported that these experiences affected them in a variety of ways, including impacts on their mental or physical health (64%) or on their job or career (53%). Specifically, worker productivity, turnover, and income are likely to be impacted, with 21% of those who experienced bullying or racial / sexual harassment reporting that they resigned from their job as a result of these experiences (HRC, 2022, p. 21).

Research identifies the lack of Māori in social work and clinical health positions (HRC, 1992; Ihu, 2021; Hunter & Cook, 2020; Mooney et al., 2020; Moyle, 2016; Papps, E. & Ramsden, 1996; Ratima et al., 2008 Whakarau, 2023). Ministry of Health-commissioned research (Navigate, 2002) showed that Māori staff working in health commonly felt culturally compromised at work and that lip service was often given to Māori protocols (Hollis-English, 2016b). This affects whether senior Māori and Pasifika staff stay and are promoted within the public sector. Burnout and high turnover among Māori social workers and nurse further results in a drain of Māori knowledge within organisations (Connolly, 2006; Ihu Research, 2021; Moyle, 2014; Pakura, 2005; Ratima et al., 2008; Ravenswood, 2022). Social work, and in particular child protection work, is considered a high stress role (Kin & Stoner, 2008)

Tupara and Tahere (2020) cite research in Aotearoa New Zealand that clinical outcomes can be improved when the ethnicity and worldview of the clinician is well matched with that of the client (Durie, 2001; Gurung & Mehta, 2001; Huriwai et al., 1998; Marie et al., 2008, Tupara & Tahere, 2020). Meyer and Zane's literature review (2013) identified nine US studies of skilled clinicians whose ethnicity was matched with ethnic minority clients, resulting in regular appointment attendance, low session dropout rates, positive treatment outcomes including substance use reduction, and greater client satisfaction (Meyer & Zane, 2013, p. 3).

Although each State agency is trying to improve its staff diversity, the progress has been slow, hindered by the dominant group's bias in recruitment, workforce capacity, and training limitations. Percentages of Māori staff in the public health, welfare and justice sectors from 2018-2021 illustrate the impacts of this bias in action, in Table 5. Pākehā make up 70% of Aotearoa's population but make up a higher percentage of the professions listed. Māori comprise 17.8% of the total population, but apart from a recent increase in Oranga Tamariki's Māori social workers following the Hastings case, do not make up 17% of the professions listed or of those staff involved in State uplifts.

Table 4

Percentage of Māori and Pākehā in Public Sector Professions

Professions working in the public sector	**% Māori** (% of Māori in NZ Pop: 17.8% 2023)	**% Pākehā** (% of Pākehā in NZ Pop: 68% 2023)
Social workers (OT)	27% (2020) – huge increase from May 2019 following OT attempted uplift	65% (2021)
Foster parents delegated by Oranga Tamariki	Oranga Tamariki does not keep ethnicity data on foster parents	
Midwives	7% (2021)	82% (2021)
Nurses	8% (2019)	72% (2019)
Doctors	4% (2019)	74% (2021)
Psychologists	5% (2018)	90% (2016)
Police	13% (2019)	86% (2019)
Lawyers	6% (2019)	78% (2019)
Judges	18% District Court (2021) 4% High Court (2021) 10% Appeal Court (2021) 17% Supreme Court (2021) 15% All Courts (2021)	79% District Court (2021) 90% High Court (2021) 90% Court of Appeal (2021) 67% Supreme Court (2021) 79% All Courts (2021)
Public sector chief executives	6% (2020)	91% (2020)
Public sector policy analysts	Less than 10% (2020)	80% (2020)
All public servants 60,381 (2022) in 36 public service organisations	16% (2022) 16% (2022)	66% (2020) 64% (2022)

Note. These statistics come from the Public Service Commission public service census data (2021, 2023) and relevant professional bodies (Courts of New Zealand, 2023; Law Society, 2024; Medical Council, 2023; Nursing Association, 2023: Social Workers Registration Board, 2023; Te Tatau

o te Whare Kahu Midwifery Council, 2023, 2024) and population data from the Statistics New Zealand Census data (2018, 2023).

5.7.3 Bureaucratic deficit model and single parents

Nineteenth-century colonial and patriarchal beliefs about white superiority, the deserving and undeserving, Social Darwinism, eugenics and othering informed the establishment of the New Zealand colonial government and public service. Belgrave (2012) outlined the historical evolution and influence of New Zealand's deficit-thinking model of social policy, which continues to shape present-day welfare discussions and government policies.

> Nineteenth century ideas about deserving and undeserving, while modified in the present, still provide restraints on present debates about New Zealand's welfare state, and limit governments in the troublesome task of welfare reform. Some groups, such as super annuitants, retain universal entitlements because they are seen as deserving, while those who are unemployed or sole parents are more rigorously means-tested and their need for welfare is much more contested. (Belgrave, 2012, p. 4)

In an article on *Human Rights and Social Policy in New Zealand*, legal experts Geiringer and Palmer (2007) noted that the concept of the “deserving”, and “undeserving” poor is mainly absent from human rights thinking (p. 16) which is an argument for including human rights thinking to social welfare practices.

Legacy structures, systems and norms left unchallenged or dismantled can remain entrenched in public service policies and practices, resulting in what is now known as structural, institutional or systemic racism and discrimination (Braverman et al., 2022; Griffith et al., 2007). For example, before 1973, single mothers encountered obstacles in obtaining state assistance due to societal and moral attitudes (Cusson, 2017; Kedgley, 1996). Since 1973, the first Domestic Purposes Benefit (DPB), now known as the Supported Living Payment (since 2014), made it possible, but still not easy, for a single parent to keep and raise a child. In 2020, New Zealand government statistics showed that sole parents continued to live in financial difficulty (Statistics, 2020). Aotearoa New

Zealand has one of the highest rates of sole or single parenthood in the OECD (Superu, 2018), with half of mothers experiencing it before age 50 (MSD, 2018a). Being on the New Zealand Domestic Purposes Benefit and the Supported Living Payment exposed single parents, especially women, to scrutiny (Stanley, 2016). Other research (2021) identified that Māori, including single mothers, experienced discriminatory experiences when seeking State support.

> Young, unwed Māori mothers were viewed as unworthy and not fit to raise tamariki Māori. Tāne Māori (Māori men) were stereotyped as inherently violent, simple-minded, and dysfunctional fathers. Their criminalisation through interactions with the state reinforced these perceptions. (Savage et al., 2021, p. 13)

Several researchers have identified from government statistics that inequities for Māori and racism have resulted in a 'pipeline' from State care to State prison for Māori, particularly for young Māori males (Cook, 2020; Mcintosh, 2019, 2011; RCAC, 2022; Stanley, 2016). Gangs such as the Mongrel Mob and Black Power were formed by young males leaving State care and abuse, with broken kin links (RCASC, 2024).

From January 2020 to January 2021, since COVID-19 and the flow-on negative economic impact, there has been an increase of approximately 11,200 sole parents on the benefit, up to 122,200 sole parents (MSD, 2022, p. 4). There has also been an increased focus on sanctioning single parents.

In 2023, Green Party social development spokesperson Ricardo Menéndez March obtained data through formal written Parliamentary Questions to then Minister for Social Development Carmel Sepuloni; revealing that for the quarter ending March 2023, 153 of the 222 sanctions, largely imposed for unpaid parking fines or speeding tickets, were imposed on women receiving the Sole Parent Benefit, and 168 of the total 222 sanctions were on Māori parents. These financial sanctions typically reduce the person's benefit or stop it completely, causing immediate poverty (Dexter, 2023, paras. 8-9).

If a sole parent of a dependent child under three years old does not "meet work preparation obligations," they can be financially sanctioned too (Work and Income, para. 3). Both State financial sanctions occurred despite the government having evidence that sanctions can cause further poverty and prevents people from seeking financial help (Cotterell et al., 2017; MSD 2019). MSD research (2018) also identified that harsh sanctions can prevent people from gaining employment.

> Evidence from the United States and the United Kingdom suggests that a very harsh sanctions regime can have significant adverse effects that drive people away from, rather than closer to, employment and might worsen rather than improve the long-term chances of children in the families affected. (MSD, 2018, p. 20)

Living in poverty can lead to higher parental stress and depression, which can result in increased conflict in relationships. and negative parent-child behaviours and for some kin, the uplift of their children (Atwool, 2021; Cooper & Stewart, 2013; Conger et al.,2010; Gibson et al., 2017; Ho et al., 2022; MSD, 2018).

Feldman (2019) highlights the detrimental effects of neoliberal government policies in the USA and the United Kingdom, which continue to "continues to demonize the poor and blame them for their own poverty, while rolling back certain parts of the welfare state." (p. 348). Wacquant (2009) discusses the 'paternalist' and neoliberal approach to punishing those living in poverty in the United States and the United Kingdom, and its impact on social welfare interventions and social workers' responses to 'clients'.

In comparison, New Zealand research (Humpage, 2011) examined public opinion data from 1987 to 2005 finding neoliberal government policies impacted public opinion negatively towards citizens regarded as welfare dependant and not taking personal responsibility. However, public opinion was not as strongly united as neoliberal politicians and neoliberal business leaders (Humpage, 2011). Other New Zealand research (Beddoe and Keddell, 2016) underscores the need for social workers and social work students, many of whom were raised in neo-liberal times and without personal experience of poverty, to develop a deeper understanding and empathy towards

poverty and those affected by it. Without such training, personal biases may perpetuate the "stigmatising neo-liberal discourses which construe poverty as the consequence of individual failings of effort, competence or morality" (Beddoe & Keddell, 2016, p. 149).

5.7.4 Government data – deficit and discrimination

Through colonisation, Indigenous peoples have historically become reidentified through legal and race-based definitions created to provide the colonists with an inroad to local assets and resources (Durie, 2005; Jalata, 2013; Talamaivao et al., 2020; Theodore, et al., 2023). Historically, Pākehā-led State organisations and public policies had difficulty identifying ethnic groups and, until recently, Māori were viewed as a homogeneous group (Chapple 2000; Cunningham et al. 2002; Gardiner-Garden 2003; Kukutai, 2004). Despite many whānau Māori thriving, "surveillance bias, exposure bias, and direct interpersonal biases lead to increased perceptions of risk" when compared to Pākehā (Keddell et al, 2022; p. 385 citing Keddell and Hyslop 2019; Kukutai & Cormack, 2020).

There are many examples of state sector information about Māori individuals being recorded incorrectly or in a derogatory way, shared inappropriately, or used to prevent whānau reunion in a fostering or State institutional care situation by public servants (Bartholomew**,** 2020**;** Cook, 2020; Else, 1991; Griffith, 1997; Haenga-Collins, 2017; OCC, 2020; Iwanek, 2017; Rangihau, 1987; Stanley, 2016; Sutherland, 2019; 2020; WO, 2020: WT, 2021). Taylor Fry (2021) identifies that there is a current lack of diversity in public service staffing for data collection and analysis roles, meaning most data analysts and advisors will not be Māori and may not understand te ao Māori (Māori worldview).

To reclaim control or self-determination of data, supported by UNDRIP, 2007, Te Mana Raraunga - Māori Data Sovereignty Network Charter (2016) states that Māori data should be subject to Māori governance so that there is quality Māori data and collection. In the *Te Kāhui Raraunga Māori Data Governance Model* report (Kukutai et al., 2023), the authors applied the work of Palawa scholar and University of Tasmania Professor of Sociology Maggie Walter (2021), which identifies

that public service policy makers and advisors should avoid 'BADDR' data and practices. In the analysis of Kukutai et al. (2023, p. 23), BADDR practices in the New Zealand context included:

> **B**lame Māori by directly or indirectly situating the dominant group as the ideal group, and / or Māori as being culpable for their poorer outcomes.
>
> **A**ggregate data in ways that misrepresent or miss key aspects of Māori identities and lifeworld.
>
> **D**econtextualise data, by focusing on Māori individuals and families outside of their social and / or cultural context, and is
>
> **D**eficit-based, implying that Māori are inherently deficient and
>
> **R**estrict access to Māori data under the control of statistical agencies and official institutions. (Kukutai et al., 2023, p. 23)

Berentson-Shaw (2018) identified five common negative narratives employed in the public research and policy information in Aotearoa New Zealand about children living in poverty.

a. Deficit framing: children living in poverty spoken of mainly in the language of damage or othering
b. Children are viewed as "independent or separate from their community including their parents and whānau," reinforced by the term 'child poverty'
c. Poverty is "the result of individual parental responsibility"
d. Poverty is inevitable, immutable and natural (e.g., 'poverty will always be with us,'). This framing suggests there are "no actions or policy decisions that create social and economic barriers to families thriving."
e. Deficit language and messages that highlight the cost, of child poverty costs, as the reason for poverty. (Berentson-Shaw, 2018, p. 32)

Historically, the deficit model approach (Durie, 2020) has been applied to Māori in all government sectors, resulting in great inequities for Māori in accessing public services, when an approach informed by kaupapa Māori (holistic strengths-based wellness) is more appropriate.

European researchers describe the alternative discourse to deficit or vulnerability, as the strengths-based or empowerment discourse (Blundo 2001; Bronfenbrenner, 1979; Pulla, 2017).

The State uplift social work policy and practice operates on the historical deficit model (Bronfenbrenner, 1979; Dettlaff et al., 2020; Durie, 1985) where, even if no harm has been done to the baby, the risk indicators are that harm will be done, because of the background of the parents and whānau. It does not recognise the ability for people and situations to improve over time and only focuses on their individual and collective weaknesses (Skodol, 2010). It is based mainly on historical knowledge and particularly targets parents, especially mothers who have grown up in State care. When the uplift practice was examined in the Hastings case, Oranga Tamariki's own inquiry determined that the social workers intervened solely on historical information, without ascertaining the current situation and the whānau and community support in place (OT, 2019).

5.7.5 Uplifts and societal inequity

Children from households living in family poverty are more likely to be in State care or uplifted than those not living in poverty, both in Australia (Bennett et al., 2020) and in Aotearoa New Zealand (Hyslop, 2019; Keddell et al., 2019; Stanley, 2016). Children from the most deprived neighbourhoods, where Māori, are over represented have nine times the chance of entering care, compared to the least deprived (Keddell et al., 2019). Keddell and Davie (2018) cite seven research studies in the United States that highlight "the intersections and influences of poverty, income and race on contact with the child protection system" (Keddell & Davie, 2018, p. 14). The *Growing Up in New Zealand (GUINZ)* study of nearly 7,000 children, born in 2009 and 2010, found a "significant proportion" of these children live in families "persistently burdened with multiple stressors associated with economic, material, and social hardship. This has created a disproportionate burden of poorer overall well-being outcomes and limited life course opportunities for these children from an early age" (Morton et al., 2022, p. 1)

Currently, many Western child protection systems are led by non-practitioner neo-liberal managerialism, highly procedural, deficit thinking and risk-averse approaches to families which allow

less focus on trauma-informed best practice and more on child notifications and removals from kin, especially if they are poor (Mansell et al., 2011 Morley et al., 2021; Munro, 2008, 2010; Platt & Turney, 2014). This is reflected in Australian research which showed that most parents whose children were removed faced exacerbated financial difficulties, including cuts in benefits and government or council housing evictions, as they no longer met the sole parent requirements (Bennett et al., 2020).

> Without broader contextual knowledge and understanding, particularly regarding ongoing poverty, decision-making by child protection workers often leads to the removal of children, while the family's material poverty and experiences of violence remain unaddressed. (Bennett et al., 2020, p. 204)

Child protection systems and services do not address the impact of income, employment and housing conditions on families and children (Bennett et al., 2020; Bywaters et al., 2022; Farmer & Lutman, 2014; Iwanek, 2018; Keddell et al., 2019). Child protection services may inadvertently (and even unfairly or harmfully) investigate and intervene on the sole basis of poverty. Evidence provided in 26 longitudinal studies from 1970 to 2016 showed a link between economic insecurity and child maltreatment, where "Income losses, cumulative material hardship, and housing hardship were the most reliable predictors of child maltreatment" (Conrad-Hiebner & Byramp, 2020, p. 157).

North American countries commonly apply a child protection focus, which is about the risk to the child from their kin caregivers and ignores parents' mental health or poverty issues, unlike many European countries, which focus on helping the child within their family and helping the family (Gilbert et al., 2011).

Growing Up in New Zealand longitudinal study data (2014) found that low-income families in rental accommodation moved more frequently than families with higher incomes. Between birth and two years of age, half of the children moved at least once, with over a third moving twice or more, with some of this group moving house up to eight times (Morton et al., 2014). Housing insecurity is a sign of poverty, with families moving as rents increase (Desmond, 2016; Rumbold,

2012; Schafft, 2006) and can result in not belonging to communities which can lead to negative outcomes (Jelleyman & Spencer, 2008; Oishi & Schimmack, 2010). Research in the UK draw a link between poverty and increased mental health issues for parents (Knifton & Inglis, 2020) and children (Rainer et al., 2024).

The New Zealand Crime and Victims survey (NZCVS, 2020) established a link between victimisation and socio-economic conditions, noting that "There is a higher level of victimisation for those under financial pressure, living in more deprived areas, unemployed and not actively seeking employment, and those in single parent households" (NZCVS, 2020, p. 1). Children whose mothers are victims of intimate partner violence (IPV) are more vulnerable to witnessing or being direct targets of violence (Fanslow & Kelly, 2016; Ministry for Women, 2012). Witnessing or experiencing violence as a child sharply increases the risk of victimisation in later life (Ørke et al., 2022; Stiller et al., 2021; Wathen et al., 2013).

The New Zealand Crime and Victims Survey for 2019-2020 (NZCVS, 2021) also identified that Aotearoa New Zealand consistently outranks other developed countries in terms of rates of family violence, particularly IPV and child abuse. One in six New Zealand women have experienced sexual violence from an intimate partner during their lifetime, a rate not changed since 1938 (Fanslow et al., 2021). In 2019/20, nearly 80,000 cases of child abuse were notified (reported to Oranga Tamariki and Police), and after investigation, 12,800 children and young people were found to have been abused or neglected (1.1% of the total population aged under 20) (Dalley, 2024). Women are the primary victims of family violence, especially IPV and coercive and controlling behaviours, with men being the predominant aggressor. Nearly half (49%) of Māori women experienced partner abuse (NZCVS, 2021). Single parents with children were almost four times more likely than the New Zealand average to experience offences by family members, including ex-partners (NZCVS, 2020). Women and girls living in multidimensionally poor households are at higher risk of male violence because they often face uncertain living conditions and have less financial independence and bargaining power within the household (UNDP, 2021). From data collected between 2018 and 2022

from 80,000 people participating in the survey, it is estimated that 2.4% of NZ adults experience the majority (77%) of all interpersonal violence in Aotearoa New Zealand (NZCVS, 2023b).

The Family Violence Death Review Committee (2020) identified ways in which institutional, systemic or structural pathways within welfare and justice sectors for intimate partner abuse are ineffective for women, particularly Māori women. A considerable proportion of family violence and sexual violence is not reported in Aotearoa New Zealand (NZ Family Violence Clearance House, 2017; MoJ, 2022a, b, c, d). For example, a Law Commission report (NZLC, 2015) noted that an estimated 80% of sexual violence was unreported, and "the majority of sexual violence is committed by men who are known to the victim either as a date or recent acquaintance, a friend or a partner" (p. iv). Most child complainants who are involved in cases of alleged sexual violence have European males as the perpetrators (NZLC, 2015). In the second volume of the government's *White Paper for Vulnerable Children* (2012b), the following protective factors against parental abuse were identified:

> Parental-child attachment, positive parenting, family stability, social support, social capital, parents' knowledge about child development, family traits and practices, including cohesion, belief systems, coping strategies and communication patterns, cultural identity, community cohesion, adequate economic resources, good-quality housing and high-quality ECE [Early Childhood Education] centres and schools. (NZ Government, 2012b, Vol. 2, p. 17)

In a Family Violence Death Review Committee's briefing paper (2017), six reasons explained why IPV, and child abuse and neglect need to be addressed together. The reasons were:

> …intergenerational violence requires an intergenerational response; the decision to abuse a child's parent is a harmful, unsafe parenting decision and affects how the victim will parent; failure to protect approaches fail to respond to child and adult victims' safety needs; focusing on what adult victims do to keep their children safe diverts attention away from the partner / parent using violence. Children can be harmed by the parent's partner, or their parent using violence, and further harmed by being removed from the care of the adult victim who cannot protect them; protecting children means acting protectively towards / from becoming adult victims; to prevent family violence, we must work with the people

> using violence; a victim's safety is a collective responsibility: it cannot be achieved by individuals or individual agencies acting alone. (Family Violence Death Review Committee, 2017, p. 1)

5.8 Child advocates' and duty-bearers - Hastings case reports

Since the 1970s, there have been advocacy groups, such as Auckland Committee on Racism and Discrimination (ACORD), Ngā Tamatoa, Nelson Māori Committee, the Polynesian Panthers, and Women Against Racism action groups, variously researching and raising issues of abuse and racism in State agencies. More recently this work has included giving historical evidence into the Child Abuse in State Care inquiry (RCAC, 2018 -2023).

Five inquiries from government and non-government agencies were produced due to the Hastings case (Oranga Tamariki, 2019; Office of the Children's Commissioner, 2020a, b, c; Whānau Ora , 2020; Ombudsman NZ, 2020; Waitangi Tribunal, 2021). The first report was by Oranga Tamariki (OT, 2019) as part of their standard practice review when something goes 'wrong'. When it was released publicly in November 2019, large parts of the Oranga Tamariki practice review were redacted with the explanation given that it was to protect personal and confidential information.

Under Judge Becroft's leadership, the Office of the Children's Commissioner led the national call to stop the uplift practice and conducted the first independent inquiry into that practice (OCC, 2020a). That inquiry identified the power imbalance between families and social workers, a lack of social worker consideration for Te Tiriti or tikanga Māori, and the negative impact that uplift separation from kin and lack of access to te ao Māori had on Māori.

Table 5 summarises the key findings of the five inquiries into Oranga Tamariki and the May 2019 Hastings case. All of the reports show that the uplift practice in Aotearoa New Zealand today is seriously flawed.

Table 5

Key findings of the five inquiries into Oranga Tamariki and the May 2019 Hastings case

Report Owner	Report Name and Purpose	Completion Date
Oranga Tamariki State child welfare agency	***Oranga Tamariki Professional Practice Group Practice Review* -Internal practice review of the Hastings case (OT, 2019)**	Nov 2019
Findings	Oranga Tamariki over-reliance on historical information and significant gaps in work to understand the current whānau situation and new information. More analysis was needed of the needs, strengths, and risks for the unborn child. Options of parental, whānau, hapū and iwi availability and capacity to care for the new baby were not fully explored. Oranga Tamariki put the onus on the parents to prove they were safe to care for their baby. Oranga Tamariki engagement with this whānau should have been built from a recognition of the strengths and values of significance to whānau Māori. Skilled searching of / for whakapapa and the use of tikanga Māori by Oranga Tamariki would have supported better engagement. Oranga Tamariki did not value Māori NGO practitioners, who had built relationships of trust with the whānau, or recognise their knowledge and expertise. Oranga Tamariki used a siloed approach. Oranga Tamariki did not understand prior trauma of parents and whānau, including previous child removal, and the effects on parents – retraumatising kin through this lack of understanding and empathy. Mother and whānau had a lack of trust in Oranga Tamariki because of previous experiences, and OT's communication and engagement were poor – so opportunity to participate in key decisions was poor. Statutory authority delegated to social workers was not understood or appropriately applied by social workers and their managers.	
Office of the Children's Commissioner	***Thematic review of Oranga Tamariki's policies, processes and practices relating to care and protection issues for tamariki Māori aged 0-3 months* (OCC, 2020, a, b, c)**	Jan 2020 (a) June 2020 (b) Nov 2020 (c)
Jan 2020a	An infographic of key care and protection statistics. A statistical snapshot of care and protection statistics over the past 16 years. A 'process map' style overview of relevant legislation, policies, and practice	

Table 5

Key findings of the five inquiries into Oranga Tamariki and the May 2019 Hastings case

	requirements for Oranga Tamariki in this area. A description of the rights framework underpinning the care and protection system.
Findings June 2020b	Oranga Tamariki needs to recognise the role of women as te whare tangata and treat them, their babies and children with humanity. Oranga Tamariki's unprofessional statutory social work practice is harming mothers, whānau, babies and children. Whānau need the right support from the right people. Māori babies and children and their whānau are experiencing racism and discrimination from Oranga Tamariki. Oranga Tamariki's organisational culture of the statutory care and protection system needs to support parents and whānau to nurture and care for their children Oranga Tamariki needs to work in partnership with whānau, hapū and iwi so Māori can exercise tino rangatiratanga.
Findings Nov 2020c	To keep babies and children 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 as the best option for real change. Māori have their own solutions that work, as demonstrated by Te Kohanga Reo and Whānau Ora. When resourcing and decision-making is transferred to Māori, transformative change is possible. Māori are not well served by current Oranga Tamariki systems; the impacts of colonisation, socio-economic disadvantage and racism are entrenched and still evident today. The statutory care and protection system continues to reproduce inequities for pēpi, tamariki and rangatahi Māori. There is a lack of evidence and trust that incremental change can deliver for Māori, as it has not done so over the past 30 years. Existing legislation, practice guidance and professional standards for culturally responsive practice are not consistently implemented and / or followed as intended. Urgent changes to statutory care and protection practice need to be undertaken immediately to prevent further harm. Immediate principles added to the Oranga Tamariki Act include repeal of Sections 18A–18D 'Subsequent child' provisions, incorporating Te Tiriti o

Table 5

Key findings of the five inquiries into Oranga Tamariki and the May 2019 Hastings case

	Waitangi principles, and explicitly offering a pathway for transferring power and resource to Māori.	
Whānau Ora	***Ko Te Wā Whakawhiti -It's Time for Change*** **Whānau with lived experience of Oranga Tamariki policies and practices, were at the centre of this report (WO, 2020)**	Feb 2020
Findings	No comprehensive guidance is available on the use of 'without notice Section 78 applications', and the available guidance on emergency powers did not articulate clear criteria for how staff were meant to identify and assess the viability of other options to secure the safety of pēpi. Subsequent child's provisions, and the Ministry's corresponding guidance, have placed the responsibility on parents for gathering evidence to demonstrate that the risk of harm has been satisfactorily removed. No reference to trauma-informed social work practice vis-à-vis assessing the parents' own childhood histories of abuse and / or neglect, as well as experiences of being in care themselves and the Ministry's prior removal of their children. These are traumatic events for parents that required a different response or reflect the legal obligation on the Ministry to ensure that, where pēpi are at risk, parents and whānau are helped to support them in discharging their responsibilities to pēpi.	
Ombudsman NZ	***Systemic Improvement Investigation: Oranga Tamariki – Newborn Removal*** **(ONZ [Boshier], 2020)**	Aug 2020
Findings	Rights of disabled parents not reflected in the Ministry's Practice Standards, and lack of guidance and international law that no baby or child is separated from their parents based solely on a disability of one or both parents. With the exception of breastfeeding, the Ministry did not have any guidance and policy specifically developed for the process of removing baby once section 78 interim custody orders are granted. The available guidance on breastfeeding did not include explicit acknowledgements of rights to breastfeeding as provided for under the United Nations Convention on the Rights of the Child and recommendations of the World Health Organization (WHO). The recommendations of the WHO and the Ministry of Health are for exclusive breastfeeding for the first six months of life. Decision-making practices connected with the removal of new-born babies under Section 78 of the Act were unreasonable.	

Table 5

Key findings of the five inquiries into Oranga Tamariki and the May 2019 Hastings case

Waitangi Tribunal ***Wai-2915***	***Treaty consistency of legislation, policies, and practice around tamariki Māori brought into state care*****. (WT, 2021)**	Nov 2021
Findings	Uplift breaches principles of partnership, active protection, and options causing significant prejudice. The notify-investigate model, coupled with a child rescue imperative, resulted in over-surveillance and disproportionate intervention and harm to whānau Māori, and to other communities struggling with entrenched inequality and poverty. State employees occasionally act in harmful and inhumane ways, due to having a court order to implement.	

Sources: Oranga Tamariki, 2019; Office of the Children's Commissioner, 2020a, b, c; Whānau Ora, 2020; Ombudsman NZ [Boshier], 2020; Waitangi Tribunal, 2021

The Children's Commissioner (OCC), the Chief Ombudsman (ONZ [Boshier], 2020), Whānau Ora (WO, 2020) and the Waitangi Tribunal reviewed the Hastings case, and the uplift practice from their different perspectives. These reports are significant because they collectively tell the experience and impact of the State uplifting babies and children for Māori mothers and whānau. What is also significant is that following this collective documentation of State poor practice, the government used its dominant parliamentary position to weaken the legislative role of the independent high-profile Office of Children's Commissioner as the sole monitor of Oranga Tamariki, despite many child rights groups advocating against such a change (Witton, 2022).

In February 2021, the Minister for Oranga Tamariki responded to the Hastings case inquiry reports by setting up the Oranga Tamariki Ministerial Advisory Board [OTAG], whose role was to investigate Oranga Tamariki "relationships with families, whānau, hapū, iwi, and Māori; professional

social work practices and Oranga Tamariki's organisational culture" (OTAG, 2021, p. 6). In OTAG's July 2021 report, released by the Minister in late September 2021, social workers were described as overworked, with high caseloads. It also noted that "the social work voice within Oranga Tamariki needs strengthening as professional practice views, opinions, and experience is missing at many levels within the organisation, including at its leadership group" (p. 10). Although recognising that Oranga Tamariki's work was complex and difficult, a damming comment about Oranga Tamariki followed the report's written findings which raised questions about the agency's long-term future.

The report's concluded that Oranga Tamariki had multiple shortcomings, in particular:

> It is self-centred and constantly looks to itself for answers. Its current systems are weak, disconnected, and unfit for the population of tamariki it serves, and there is no strategy to partner with Māori and the community. (MAB, 2021, p. 10)

The same report describes the in loco parentis role of the Crown. "The Crown has assumed the lead role in supporting tamariki and whānau without really knowing how to be effective in this" (MAB, 2021, p. 80). By operating in this way, "the Crown has undermined the role of communities and particularly of hapū and iwi in leading their own communities" (MAB, 2021, p. 8). These comments summarise previous reports that the current uplift practice, and the entire child welfare system, do not represent a Te Tiriti partnership with Māori. Overall, the report's findings state that for any Māori child and their family, being involved with Oranga Tamariki in 2021 was harmful.

> The evidence is clear that the needs of tamariki Māori and whānau are not well served by the current system. Coming into contact with the current care and protection system, even if only briefly, can reinforce and cause further damage to already vulnerable and hurt tamariki and their whānau. (MAB, 2021, p. 9)

While supporting this report, Auckland University lecturer and former social worker Dr Ian Hyslop (2021) said the recommendations did not go as far as the Children's Commissioner's earlier report, *Te Kuku o te Manawa* (2020), which argues for a 'by Māori, for Māori' approach and a transfer of responsibility, resources and power from the State to appropriate Māori entities (OCC,

Part 2, 2020, p. 6). Nor, Hyslop found, did the report support the Waitangi Tribunal's setting up of a transition authority to lead this Te Tiriti-informed devolution (Waitangi Tribunal WAI 2915, 2021, April, p. xiv).

In 2021, Oranga Tamariki's then Minister Kelvin Davis and the government accepted all the Ministerial Advisory Board recommendations to fix the child protection system. The key actions for change were:

- Decision-making and resources devolved to communities, with children and whānau at the centre of the system
- A new operating model, with better support and training for social workers
- 'Without notice' orders (uplifts) used only after proper engagement with whānau (MAB, 2021).

The five Hastings case inquiry reports illustrated the racism and discrimination in the uplift process. Research of Māori and Pasifika leaders' involvement with public sector health advisory groups and their consultation reported that their knowledge and interests were devalued, and they had experienced racism and tokenistic cultural engagement (Came et al., 2019; Came et al., 2023).

In 2020, following the Hastings case, Oranga Tamariki's first Chief Executive, Grainne Moss, presented to the Waitangi Tribunal in relation to its uplift inquiry. Moss's comments reflected *Puao-te-ata-tu*'s 32-year-old findings of racism in the child protection agency and showed that little progress had occurred.

> Structural racism is a feature of the care and protection system which has adverse effects for tamariki Māori, whānau, hapū and iwi. This structural racism has resulted from a series of legislative, policy and systems settings over time and has degraded the relationship between Māori and the Crown. The structural racism present in the care and protection system reflects its presence in society more generally, which has meant that more tamariki Māori are reported, thus coming to the attention of the care and protection system. The impact of structural racism on outcomes for and experiences of tamariki Māori and their whānau, and

> on culture and trust, means that the Crown should have identified the need to tackle structural racism when establishing Oranga Tamariki. (Grainne Moss, WT, WAI, 2915, p. 5)

Since 1986 when it was published, there has been interest in implementing the *Pūao-te-Ata-tū* recommendations, but only minor progress has been made. That lack of progress was commented on in the Hastings case reports. The *Pūao-te-Ata-tū* report recommended the establishment of the Mātua Whāngai programme, based on traditional Māori parenting, to keep Māori children within the whānau environment rather than in State care (Durie, 1998; MAC, 1988). However, doing so was not a priority when the Oranga Tamariki agency was set up in 2017.

In 2021, Waitangi Tribunal claimants in the Oranga Tamariki uplift inquiry (WAI-2915) endorsed the view of *Pūao-te-Ata-tū*, 1988, which they said remains pertinent to the challenges facing the care and protection system today. Māori child should not be viewed in isolation, or even as part of a nuclear family, but as a member of a wider kin group or hapū community that has traditionally exercised responsibility for the child's care and placement (WT, 2021, p. 61). This comment highlights many concerns.

> We have been disturbed at the extent to which Social Welfare institutions and indeed the courts, have a clientele which is predominantly Māori. We think that as a society we cannot survive much longer if we continue to ignore these facts and the situation which give rise to them. We believe that society in New Zealand is not aware of the extent to which the law has defeated the maintenance of the Māori way of life. (MAC, *Puao-te-ata-tu*, 1988, p. 7)

In December 2021, the Crown released its response to the Abuse in Care Royal Commission of Inquiry in a report entitled *Hāhā-uri, hāhā-tea: Māori involvement in State Care 1950-1999* (Savage et al., 2021). Results presented in this report emphasise the devastating, intergenerational harm that tamariki Māori and whānau have experienced through enduring, systemic and structural racism across the State care system. This intergenerational legacy was still evident in 2019, with Māori babies being five times more likely to end up in State care than non-Māori, with the urgent uplifts doubling since 2010 (OCC, 2020a). However, the five inquiries and their timely leadership and

coordination following the massive publicity around the Hastings case, made a significant difference to the number of babies taken into care in the following year.

> The rate of orders used to remove babies into the care of Oranga Tamariki reduced by more than half in Aotearoa New Zealand in 2019–2020 as a result of rapid reform, prompted by a high-profile media case known as the 'Hawkes Bay case'. (Keddell et al., 2022, p. 378)

Following on from the Hastings case, the *Oversight of Oranga Tamariki System Act 2022* gave greater responsibilities to the Ombudsman, along with a new Independent Children's Monitor, to monitor Oranga Tamariki. While in a controversial move, the Government disestablished the strongest child advocate, the Office of the Children's Commissioner, with a new Children and Young People's Commission (*Children and Young People's Commission Act 2022*, s. 42; *RNZ,* 2022; VOYCE, 2022).

5.9 Gaps in literature and State data

Gaps in official information collection and recording can leave some individuals, groups and their experiences voiceless and undocumented, in a public sector system based on deficit thinking and avoidance of State responsibility. Stanley (2016) noted the destruction of official files relating to State care institutions and to information in individual files, as if erasing the file would erase the abuse. Destroying personal data also denies many people in State care or adopted people access to whānau birth information (Iwanek, 2017). In 2021, former Government Statistician and Families Commissioner, Len Cook, commented on the missing data.

> It's interesting because when it comes to prison statistics, of course, we can go right back to the 1850s. When it comes to child protection, it's really only about 2000, that they had a computer system that worked. And the irony is we introduced this world-leading legislation in 1989, and did nothing to monitor it, which is absolutely disgraceful. (Ihi Research Hāhā-uri, hāhā-tea, 2021, p. 5)

The Aotearoa New Zealand government has no historical bureaucratic data on children abused in State care and only started recording this data in 2010 (Cook, 2021). Oranga Tamariki collects this data while also managing and providing the State care – a possible conflict of interest, which hopefully the Independent Children's Monitor (ICM) can review with its increased powers in 2023.

In 2023, Oranga Tamariki still does not keep data on the ethnicity of the foster parents, recording only if they are kin or not. A child's identity and cultural needs may not be met or be in 'their best interest', as in UNCRC's Article 3, when placed with foster parents who do not share their cultural background (Carriere, 2008; Connolly et al., 2017 citing Barn & Kirton, 2012; Compton, 2016; Hall & Steinburg, 2013, Morrison, 2004; Tanga & Nyasha, 2017). *The Hāhā-uri, hāhā-tea Māori Involvement in State Care 1950–1999* report (2021) found "a lack of ethnicity data has constrained analysis of Māori staff working in State Care and how this has changed over time," although they acknowledged there was a shortage of Māori staff since the 1950s (Ihu Research, 2021). There are no official numbers on cross-cultural fostering, but in 2014, 50% of the children in care were Māori [69% in 2019, (Law Association, 2024] and that many of these children are in foster families that are not Māori (Connolly et al., 2014; OCC, 2020).

Oranga Tamariki keep any records of the characteristics of the mothers or parents of children uplifted, for example their ages or ethnicity (Cook, 2020). United Kingdom data, like Aotearoa New Zealand's Oranga Tamariki data, "is severely hindered by the lack of almost any individual level data about the parents of children in contact with children's services and about the socio-economic circumstances of their households" (Nuffield Foundation, 2022, s. 46).

There is no data kept on teenagers who leave State care to see how they are faring later in life, as there is no follow-up. For privacy reasons, once they are independent adults, they can consent to be followed up for research purposes but not for mandatory checking.

There is no historical or current data collected on children abused by their adoptive families or the outcomes for those children compared to those in State care or the general population. No specific data is kept after adoption, making this group and their outcomes largely invisible.

In 2018, Oranga Tamariki acknowledged that the agency did not know how many children in State care have mental health issues or have attempted suicide as no data was kept on this (*RNZ*, 2018c).

The *State of Care* report (2015), this comment about Oranga Tamariki's predecessor, Child, Youth and Family, noted that "We don't have enough information to say conclusively whether children are better off as a result of state intervention, but the limited data we do have about health, education, and justice outcomes is concerning" (*State of Care*, 2015, p. 5).

In 2021, the newly established Independent Children's Monitor reinforced the above comments from *State of Care* report (2015) with their own concerning conclusion.

> Gaps in agency information make it difficult for us to fully understand how the agencies are meeting their obligations under the Care Standards. We are unable to say Oranga Tamariki and Open Home are meeting all obligations for tamariki Māori or disabled tamariki, or for all tamariki and rangatahi in care. This is because of gaps in their self-monitoring. (ICM, 2021, p. 13)

Chapter 6: Findings: Voices of Participants

The previous chapter identified the available literature on this research topic. In this chapter, descriptive qualitative research themes from the thematic analysis of face-to-face interviews with 18 participants in public health, welfare, justice, policy, and the law, including experience with human rights, Te Tiriti, and UNCRC, are presented. These participants are considered duty-bearers in human rights agreements, but this role is not clearly identified for many professions in Aotearoa New Zealand.

The themes were developed using thematic analysis and systematic methods: The Hermeneutic circle approach to the available literature produced initial themes as preparation for interviews with participants, where initial themes from literature were tested and new themes raised by participants. Going back to the literature to find literature on the themes participant raised. As part of thematic analysis, I used Nvivo to analyse participant data to produce codes or themes and the frequency of these codes or themes. Then I examined all the themes to see what participants prioritised and the common patterns emerging from all the data. Six main themes, and sub-themes, are shown in Table 6, on the next page, and are discussed in this chapter.

Terminology in this chapter describing how many participants held a particular view or experience is as follows: *few* refers to 1-2 people; *some* refers to 3-4 people; *several* refers to 5-7 people; *many* refers to 10 or more people; *most* refers to 14-18 people. To represent participants' views, their verbatim statements, presented in indented quotes or phrases in-text with quotation marks, are included to illustrate both common and diverse views on the six main themes that emerged. Most verbatim quotes are attributed to a stakeholder group (e.g., nurse, midwife, social worker, lawyer, researcher, public servant) without further description to avoid identifying individual participants.

Table 6

Themes and Sub-Themes

Themes	Sub Themes
Theme 1: Uplifts are traumatic	• Views on the Hasting uplift case • Uplifts cause trauma
Theme 2: The uplift practice as an abuse of human rights	• Human rights and Te Tiriti o Waitangi • State targets Māori, young mothers • State targets parents who grew up in State care • Right to ask and receive help - lead to uplifts • Rights of the child, mother, whānau in the uplift process • Child and mother - rights to participate • Rights of the child - rights of the parent • Mothers and babies - right to special care
Theme 3: State duty bearer – 'dysfunctional' parent	• State intervenes – 'no parenting plan' • State as 'negligent' parent • State as an 'abusive' parent' • "Children don't belong in State care" • Long-term effects of State care
Theme 4: State uplifts don't improve family life	• "State uplifts are heavy-handed" • Public servants bully whānau seeking reunions • Separating mothers and babies doesn't make the issues go away • Intervention needed but avoiding an uplift
Theme 5: Difficult history leaves a harmful legacy	• Ideas about the origins of the uplift practice • Plunket – "incompetent mothers" and "state-sanctioned racism" • State 'closed adoption' programme destroyed families • State-sanctioned removal of children from whānau
Theme 6: Public sector barriers to change	• Public service – a British colonial legacy • Oranga Tamariki, Ministry for Vulnerable Children - deficit model • State agencies deficit model harms people • Senior leadership - lack commitment to Te Tiriti o Waitangi • Public service managerialism • Risk-averse public sector leadership • Public service cronyism • Positive, collaborative public service leadership • "Yes, Minister" dilemmas and "free, frank, and fearless" advice • "Culture of silence" versus "speaking up" – challenging poor behaviour • Barriers to public service collaboration

6.1 Theme 1: Uplifts are traumatic

This theme arose from participants' responses to the State uplift practice, particularly how uplift affects the child-mother dyad relationship. The theme starts with participants' views on the Hastings case, which leads to a more general commentary on uplifts as a traumatic experience.

6.1.1 Views on the Hastings uplift case

At the beginning of the interviews, participants were asked to provide their insights into the Hastings case, which led to some revealing their personal experiences of other State uplift situations. All participants had viewed the Hastings case footage documentary (*Newsroom,* May 2019), which depicts Oranga Tamariki's attempts to enforce the uplift of a newborn Māori baby from its mother and whānau in Hastings Hospital. Several participants commented that in the Hastings case, Oranga Tamariki was the lead but did not act alone, working with other State agencies, including those from the health, police and justice sectors. Participants recognised that the agencies "act together" or "collude" in this practice. The word "cruelty" was used by over half of the participants, with five people using the word "torture."

> It was actually torture what they did to that young woman who had recently given birth. And they were sitting in her hospital room, and she was terrified to fall asleep. And that's malicious. I don't know what gave them the right to enter her room. I don't know why she had no right to say, "Get out of my room." I don't know why the DHB [hospital] colluded and enabled that kind of torture to go on. (Policy advisor)

In addition to the lack of professional judgement, some participants described the Hastings social workers and hospital staff as displaying a lack of "kindness," "care," and "empathy" in the situation. One participant described a feeling of shared community empathy from the broader society's response that this longstanding practice was "wrong."

> I think that human element came into it. To those parents who may have had stress, as we all have had from time to time in our family lives, they could see right now there's a baby at the centre of this and he's a member of this family and this removal is wrong. (Social worker)

Most participants raised issues of racism and discrimination in attitudes, practices, and systems illustrated in the Hastings case and the uplift practice, in particular, which "targeted Māori babies, Māori mothers and whānau." Several participants remarked that individual practitioners' biases were apparent in the Hastings case and the uplift process, in general.

> People come with their own biases, and the teams are stacked towards people with a specific bias that is so frequently not the perspective that the people most at risk in New Zealand need. (Senior policy advisor)

[Bias, and threatening behaviour, was also evident in Joss Shawyer's experience in 1969, as a young, single mother who fought to keep her twin babies, and did so (Shawyer, 1979, 2024).]

For one former Oranga Tamariki foster carer, who was an experienced parent, the Hastings case documentary brought up the negative experiences of why they stopped offering temporary care after receiving inadequate support and treatment. Despite the pain caused by the State agency's targeting of Māori, this participant still harboured a strong desire to provide care but was rendered helpless due to a lack of trust in Oranga Tamariki's practices.

> I don't want to be part of that racist kid-grabbing bullshit. I really don't. Yet, I would still really like to help children who need help. So, I do nothing because I don't know what to do. (Former Oranga Tamariki foster parent)

A public service manager voiced the commonly held understanding of public sector hierarchy that, in the Hastings case, managers behind the scenes were directing frontline social work staff involved in the uplift, so the staff present were not free to negotiate a new partnership solution, or direction, in response to the situation. One senior policy participant described the social work staff involved as totally focused on "the course of action" rather than the people involved.

> I thought the staff involved were lacking basic knowledge about the legal process. They were linear; they were absolutely committed to a course of action. I guess they saw themselves as good public servants because they were relentlessly pursuing something. Even if they'd stood back for a moment and saw they were administering torture. (Senior manager)

Several participants thought the Māori social workers engaged in the Hastings case at the last minute, apparently without having the full case knowledge and involvement, were being "used by Oranga Tamariki" in the video. Examples of Oranga Tamariki media conferences and inquiries were given where Māori senior staff who had no earlier involvement with the Hastings case or the uplift practice had to stand with Oranga Tamariki's Chief Executive and defend it, as though it was their doing. Regarding this "common" public sector practice, one participant said, "I would say it's indefensible."

Pākehā participants stated that the working life of a senior Māori public servant is "more difficult" than their Pākehā colleagues for two reasons – "Because they are Māori, they are expected to know about all things Māori," and "Pākehā public servants, unlike Māori, generally do not get pulled into areas outside their work expertise." Māori participants confirmed this view, with one Māori public servant saying that when they started in a general policy role, "the expectation from my colleagues was that I knew about everything Māori" and they had to be "the go-to person."

All participants expressed an appreciation that the 'without notice' urgent uplift practice was being "exposed" through the Hastings case media coverage or online footage and shown to a wider audience and "being discussed."

> What that documentary threw out was stuff that was really well known to Māori, that this is what goes on. So, you had half of the country going, "Yes, of course, this happens all the time, and now you're actually seeing what it looks like," and the other half going, "Holy hell, I didn't know this was going on." (Policy advisor)

Several participants expressed shock at the Hastings uplift documentary, saying that, like many other New Zealanders, this was the first time they had seen a forced removal. Participants talked about how they hoped the four State agency reports and one Māori-led Hasting inquiry report "would make a difference, and not be buried," as past reports such as "Pūao-Te-Ata-Tū" and the ones on "Lake Alice" had been.

Several participants reflected that removing babies from their mothers through uplifts was "the State taking control" rather than "working in partnership" with the mother, the parents and family, and other supports such as the community midwives.

One lawyer commented that following the Hastings case, several Family Court judges reviewed their practice, "pushing back" on Oranga Tamariki staff who failed to provide sufficient information or demonstrate constructive work with mothers, parents, and whānau during pregnancy.

6.1.2 Uplifts are traumatic

Following interview discussions of the Hasting case, several participants who had witnessed or been involved in an uplift situation related their own experiences. This experience was "very difficult" and "highly emotional" for many, and several participants cried while recalling the details.

Participants who had supported mothers and whānau of uplifted children compared the Hastings case as similar to their own experiences in that uplifts were without notice, and police officers accompanied the social worker/s. These uplifts had occurred hours, days or weeks after a woman had given birth, or after "a nasty relationship breakup," that is, "when the women were at their weakest physically, mentally, and emotionally."

One community worker described a common uplift situation that occurred after a report of concern was raised by an "abusive ex-partner," explaining how the woman had "little State protection or understanding from the social worker and police officer that the allegations from her ex may not be true. It didn't matter to them as they took the children anyway." Many participants commented that once the State removes children from a biological parent, "it can take months and commonly years for the children to be reunited with that parent."

Social worker, midwife, nurse, and family support participants said the without notice uplift practice commonly occurred when the mothers were on their own in the hospital or "more often" alone at home "in a less public setting" with the child or children and were unable to mobilise external support. In the experience of some participants, the uplifts mainly happened at night, or

early morning when everyone in the household was asleep. One participant viewed uplifts as "like the dawn raids," reflecting the "racist" State immigration and police policy and practice in 1970s New Zealand of entering homes housing Pacific people (or Pacific looking people, e.g. Māori) to look for immigration 'overstayers'. [That practice was seen as racist, as Europeans from the United Kingdom were the largest group of overstayers at the time and yet they were not targeted.] (Anae, 2020a, b; MCH, 2024).

Whether the uplift setting was the hospital or the home, involved participants felt "the uplift was traumatic" for everyone involved. One nurse described a hospital uplift where "everyone apart from the social worker and the police officer were crying. The mother was screaming, and they locked the door on her, as her newborn baby was taken away." The nurse who made this comment said other colleagues who "heard the commotion" and came to see what was happening "were in tears." While describing the experience in the interview, the nurse was in tears. Although the uplift occurred in a hospital, the nurse and her nursing colleagues were not part of the decision-making, despite having built up a good relationship with the mother, "who was caring for her baby really well so there were no concerns from our end."

Another senior nurse described how the practice of uplifts affected staff working in a separate unit dealing with seriously ill babies.

> Even if the baby has nothing medically wrong with it, Oranga Tamariki ask if the baby can come to our unit, which is not fair because that's losing the trust, so that we then go into lockdown, which is easier to do where we are. We've had mothers screaming in the corridor and banging on the door. It's just so cruel … so hard for the other mothers, they are thinking ... better not put a foot wrong, they might take my baby away. (Nurse manager)

Several participants spoke about social workers supported by police officers removing babies and children from their mothers during the night. One whānau support person described a young child's uplift from their home in 2019. The father, who had drug and violence issues, had left the family to live with a new partner in a town several hours from his child, but was still angry at his

ex-partner and accused her of hitting his daughter in a Report of Concern to Oranga Tamariki, which was later dismissed in court. The social worker and police officer arrived in the early morning while the family were asleep and removed the child forcibly from the mother. When the mother tried to pack her daughter a bag, the social worker said, “She doesn't need anything from you.” For nearly two years, this mother asked Oranga Tamariki for her child to be returned from a “very dodgy overcrowded foster situation” that was in the same residential location as the father but several hours’ drive from the mother. The whānau support person said, “Although the Police and Court had dismissed the allegations against the mother a year earlier, Oranga Tamariki social workers continued to deny the mother reunion or access.” The child was finally returned, after being sexually abused, and “was a shadow of her previously bubbly, dancing self.” The mother received “no apology or support for the harm that had been caused” to her daughter or herself by the system. The whānau support person was also a senior public servant in the health sector and was deeply disturbed by Oranga Tamariki staff’s “constant bullying” of the mother, including Oranga Tamariki meetings where her ex-partner and his family members had been able to bully her, “without any staff intervention.” This experience of whānau being ‘bullied’ by Oranga Tamariki staff is expanded on in Section 6.5.2.

Two counsellors who had worked with children who had been abused in State care said that, only after that abuse, the State returned the child or children to their families. One counsellor commented that “being abused in State care, leading to a formal complaint or a caregiver prosecution, seems to be the easiest way for the State to return a child or young person to their whānau.”

6.2 Theme 2: The uplift practice as an abuse of human rights

In Theme 2, the sub-theme sections that follow summarise the participants' responses to the State uplift practice in relation to Te Tiriti and UNCRC and human rights abuse.

6.2.1 Human rights and Te Tiriti o Waitangi

All 18 participants mentioned “human rights” and “a lack of rights” in this situation. Fifteen participants mentioned UNCRC, and sixteen participants talked about the “Treaty of Waitangi” or “Te Tiriti” in the human rights context.

Participants who mentioned the targeting of Māori mothers and babies with uplifts viewed it as a breach of Te Tiriti and the children's and their mothers’ human rights. All 18 participants talked about “partnership” and “partnership with Māori” and both indirect and direct recognition of the Te Tiriti as solutions. One participant said, “There seems to be no consideration of Te Tiriti in the uplift practice.”

One lawyer noted, since the Children's Amendment Act 2018, children's rights in New Zealand law, derived from the UNCRC or the UNCRPD, “must be respected and upheld”. Citing this Act, this lawyer re-stated that, “children should be viewed in the context of their families, whānau, hapū, and iwi, other culturally recognised family groups, and communities.”

Legal and social work participants commented that historically judges were influenced by a “misguided” belief that a child, uplifted from their family, should be given an opportunity and the time to form a secure psychological attachment to their non-kin caregiver. One social worker said, “this emphasis on committing to a temporary family placement often prolongs the child's stay in State care with non-kin caregivers and hinders family reunions.” Other social work and counselling participants thought a holistic, bioecological view, where “the child or children’s extended kin or kin-like family connections were automatically contacted” to care for the children, was not part of the State uplift practice.

A counsellor described a court case where the mother was breastfeeding her baby, and the State welfare agency wanted to remove the child from the mother's care. The Judge told the mother to stop breastfeeding her baby as she was “a nuisance” as it prevented her baby from going into State care. “So that was a huge breach of human rights … for the baby as well as for the mother.”

6.2.2 State focus on Māori mothers and young mothers

Fifteen of the participants talked about the "identity" or "role" of the mother, and many participants highlighted that if a person was "Māori, poor and a single mother," they were "harshly judged," especially when dealing with Work and Income, Oranga Tamariki, or the Court system. Participants reported feeling that the uplift practice targeted "mainly Māori and young mothers." One health researcher commented that "Most parents going into hospital to give birth will not think it will result in having their child removed or permanently taken. However, this is a very real thought for young Māori parents."

Participants discussed historical discrimination against unwed women, citing examples of forced adoptions before the early 1970s for women without family or State support such as the Domestic Purposes Benefit (1973) and Sole Parent Support (2013). One former social worker recalled her experience of working with young unmarried mothers in the 1970s.

> The pressure on unmarried mothers was terrible, with everyone against them. Pākehā mothers in relationships with Māori men had their babies removed for adoption after being targeted by the State, a move often supported by the mother's family. (Former social worker)

6.2.3 State targets parents who grew up in State care

Several participants also described the "targeting" of mothers who had grown up in State care. A social work participant empathised with mothers who had this background and then were "forced" into this uplift position by Oranga Tamariki and commented on "the powerlessness" they felt against the resources of the State.

> When you're in that kind of one-down position, your ability to be able to fight or contest anything, to be able to put an alternative view is really limited. And your knowledge about what rights you have or your power to bring anybody else in, to counter what's happening, is very limited. (Social worker)

Social work and nurse participants said that mothers with State care backgrounds have "an extremely high chance" of having their first, second, and any further children, removed from their care. One former social worker said, "From 2016, until the law was repealed in 2020, any subsequent children were likely to be removed too." This participant described "the paradigm shift" to more "risk-averse" behaviour from social workers and a higher level of family intervention by the State agency during that period.

> When the Subsequent Parent legislation came in, [there] was a philosophical change. And it seems to me… that that's when things started changing and there was more risk-averse behaviour and children were removed, especially more Māori children were removed at an earlier stage from that point. (Social worker)

A midwife working in one of the country's largest hospitals described the lengths that these "vulnerable mothers" may go to when facing a possible State uplift of a subsequent child.

> Several times, we have come across a young mum who just presents at the hospital, in advanced labour, alone and without any antenatal care or a midwife contact. Warning bells go on… sure enough, she had her first child or previous child removed and has moved to another DHB (hospital) area to have her next baby, in the hope that it won't be taken away. But they don't realise that their NHI [National Health Index] number can link up their data, wherever they are. It's so sad. (Midwife)

6.2.4 The right to ask for and receive help leads to uplifts

Many participants talked about people, particularly Māori and those who had grown up in State care, or people with mental health issues, having "a real fear of interacting with Oranga Tamariki." They shared examples of mothers they knew who had sought help but had their child or children taken into State care. The mothers were after "some practical wraparound support to get through a difficult time." Still the mothers' social worker interpreted this as "not coping" and a reason for an immediate uplift. These participants described the mothers as feeling that they "had no rights" after the uplift against the well-resourced State agency. Participants described these

mothers as needing significant help to cope with their trauma but not receiving it. Health sector participants said that if these women did not have mental health issues before the uplift, they were likely to develop those issues after the uplift, and access to good counselling "was largely out of reach" for them due to financial constraints and long public health waiting lists.

Several participants talked about UNCRC, specifically Article 18, which gives parents the right to receive help to raise their children. In their experiences, often the parents did not get this help. For instance, an experienced community nurse recalled several times using all her community network contacts to try and find suitable interim accommodation for a mother and baby, noting that "It's not easy to find any supportive temporary places for mothers and babies."

A well-networked counsellor also recalled trying to find a safe place for a breastfeeding mother who was in a "terrible" domestic situation. I could not find anywhere for her to go. So, in the end, I paid for her to go to a motel myself so we could keep on looking."

With rents increasing astronomically in Aotearoa New Zealand over recent years, participants knew of clients who were staying with family or friends for extended periods but had to move out when their baby arrived. As one midwife said, "there was simply not enough room for everyone after the baby was born."

For mothers who have grown up in State care, they often lack access to kin or community support, one participant stated that "the links with their biological family are often broken or fractured from being so long away." These women did not feel able to connect into possible extended family support so were either on their own with the baby or "couch surfing" at the goodwill of friends.

6.2.5 Rights of the child to be attached to whānau and to community

"A child is born with whakapapa and whānau connection that they carry with them."

The senior policy advisor who spoke these words about the child's whakapapa related this comment to how these rights are strengthened by being within a whānau or extended family and broken or weakened by the child being in State care away from whānau. This participant, described

having a strong identity as the “fundamental human right which allows each person the ability to enjoy all of their rights.” Several participants talked about these “whakapapa” or “identity” rights as part of several articles of the UNCRC.

One senior public servant with a legal background stated that as well as the family and genetic connection, identity articles in UNCRC connect a child to their broader society, enabling them to benefit from health, welfare, and education services, as well as the judicial protection offered within that society. Several participants argued that being placed in State care has denied these rights to babies, children, and young people. One community-based nurse expressed frustration with Oranga Tamariki and its predecessor agency over the years in relation to getting essential health services for clients in State care, commenting that “Getting Child, Youth and Family or now Oranga Tamariki to pay for glasses, dental care, or for the young person in their care to have a proper health assessment, is nearly impossible.”

Midwives, nurses, counsellors, and social workers interviewed all mentioned the “importance of attachment.” All noted that when mother and baby are separated, their initial and crucial attachment is “weakened and even broken.” Additionally, the baby can have difficulty forming and keeping attachments in later life. The foster parents described children in their care as taking a long time to trust or build a connection with them, especially if the child had had multiple placements previously. One social worker said that there were occasions where foster parents asked for a child to be removed as they had not bonded, or the child was “not fitting in” with other children. Participants had seen the effect of the lack of attachments when working with adults who had spent their childhoods in State care (discussed further in Theme 3).

Several participants experienced adoption practices and compared the uplift practice with the common practice of separating mothers and babies under the State's closed adoption system. They felt nothing was learnt from the legacy of closed stranger adoptions with the uplifts that separate a child from their biological kin.

6.2.6 Child and mother - rights to participate

All 18 participants emphasised that a baby, due to its development stage, is entirely dependent on its mother. However, after an uplift, the baby becomes solely reliant on the State for their health, safety and well-being, leaving the child in a precarious situation. Participants recognised that the mother is left "without rights or options" when her child is removed. Several public servants cited the UNDHR which entitles mothers and babies to "special protection," further highlighting the vulnerability of the baby and mother in an uplift.

Several participants identified that a child's developmental stage and age renders them "voiceless" as per the UNCRC in the uplift, and "their mother does not have a voice to participate either." This lack of representation was a significant concern to these participants as they felt the uplift practice largely "disregarded" children and kin rights.

Several participants noted that, as duty-bearers, the social worker and other public servants, make all the uplift and future living decisions "in the best interest of the child." However, these participants regarded social workers' claims the uplift action was "in the child's best interests." as "questionable." Several participants felt that State duty-bearers looking at the baby's rights without considering the baby in the context of their mother's and kin's rights might encourage the frequency of the uplift practice.

In a discussion about the Family Court uplift process, one lawyer said that social workers are "supposed to provide the judge with proper and adequate information to justify getting the warrant." Generally, participants in the health and justice sectors said that little evidence was produced, as the "urgent without notice process (a legal term for a process that occurs without the other party's knowledge or participation) was conducted in a panic." Participants noted that the "urgent timing" meant social workers and their managers often did not have time to conduct a proper investigation or research to check whether a complaint was valid.

> The without notice application means that the wider family are not informed or involved. Without notice orders are usually granted the same day or within 24 hours and there is no time or notice to mobilise family members or other support. (Lawyer)

Participants commented that in the Hasting example and the other uplift cases they experienced, no independent advocate for the parent or a separate lawyer for the child had been involved in informing the without notice orders that Family Court judges gave. Participants familiar with the legal process made comments similar to that of a community worker who commented that, "few mothers and whānau in an uplift situation can afford a lawyer and may not know who to call if they could." In most cases, the child is uplifted before kin can seek any legal advice, with access and cost being additional barriers.

6.2.7 Rights of the child - rights of the parent

A lawyer with experience in children's rights said the idea of individual child rights, as defined in UNCRC was "difficult to promote among the general public" where a strong attitude still exists of children being the "property of parents."

> Children are often regarded as having to earn 'rights 'from adults as privileges that can be revoked if the children do not continue to behave well, rather than entitlements inherently possessed by children by virtue of being human. (Lawyer)

Multiple participants expressed the view that there is often a perceived conflict between the rights of children and the rights of parents in cases involving Oranga Tamariki, the Family Court, or during separation and mediation proceedings. They argued decision-making should not be adversarial and should not be framed as an 'either/or' situation.

Two participants said that due to Aotearoa New Zealand signing UNCRC in 1993, government agency policies and practices needed to change to reflect "the human rights of the individual child" within the collective family, whānau, hapū, societies and communities that live in a bioecological way. Several participants said tension in the core parent-child relationship could and "does occur" when it is looked at purely "in the best interests" of the individual child and not

viewed, in one social worker's words, "in a child's bioecological context within their family, whānau and community and their rights to identity and culture." Participants who worked with whānau Māori felt that "bioecological models, especially mātauranga Māori models," best supported a whānau-, hapū- and iwi-centred approach rather than the purely 'child-centred' approach.

6.2.8 Mothers and babies - right to special care

Midwife and nurse participants stated that mothers and babies "need special care and attention" (referring directly or indirectly to UNDHR 1948, Art. 25), describing the "vulnerability" felt by pregnant and new mothers, and "the fear of not coping." One midwife described a crucial finding in the *Growing Up in New Zealand* study (Morton et al., 2014) which stated that 40% of pregnancies are unplanned, making this milestone "highly stressful" and "precarious" for some women. That finding was echoed by another participant.

> Pregnancy is so stressful anyway, without being a very young mother with no, or inadequate, family support. They may have health issues, relationship issues as well as financial problems and a poor living situation. (Nurse)

Other participants expressed similar misgivings, with one saying, "We just don't do enough for new mothers," and another summarised what good support could look like and how it would benefit mothers.

> Continuity of care, reducing anxiety around things like housing, food, and the necessities of daily living would make a huge impact for those women and provide them with a much better start. They'd have a lot more peace of mind. We don't have that currently. (Midwife)

All participants recognised that "parenting is hard" and not easy to do in a small nuclear family without extended family support. One participant described the situation very clearly after working with mothers who felt vulnerable, especially if they were worried about coping with a new baby when they had other children.

> If you're a new mum with other children, there's a lot of fear about having your baby taken off you if you seem to not be in a position to be able to provide that care. You may not have

> the family support as your family or extended family may not live in the same city. Or you just may not have that support yet. (Midwife)

Several female participants recalled their mothers, or themselves, having a two-week stay in the hospital, so they went home fully recovered from childbirth. One participant who had her babies in the 1970s described the experience of having her first baby in hospital.

> The baby nurses and midwives were excellent. I learnt to breastfeed and bathe the baby properly and how to really care for the baby, so that when I went home, I had recovered from the birth, had good sleep, so good energy, to cope with baby at home. I really appreciated this time as I had not had much experience with babies before. (Policy advisor)

Three participants discussed changes in hospital policy and practices regarding new mothers' hospital stays over the last two decades. It had gone from a two-week stay in the hospital for new mothers to two hours or less for normal births. Participants felt that post-natal services changed from comprehensive care to little or inadequate care over a few years. One midwife participant commented about the reality of new mothers leaving the hospital with a baby.

> Some mothers are okay and have a good supportive partner and family. For others, it's a real worry as you know they don't have much support. Yet, in my experience, all new mothers leave hospital wanting to do their very best for their baby. (Midwife)

This midwife reflected that shorter hospital stays had, in her experience, led to "greater readmissions of new mothers or their babies and post-natal depression." Several participants shared this midwife's concerns, with one saying, "We are not looking after the mothers properly… and that's hugely important." This participant talked about how many cultures and Indigenous peoples "understand that really important time between mother and baby in the first week or two or three or four," and how she had often witnessed such care.

> It doesn't matter how many other children are around or how few other children are around; they look after their mothers as well as looking after the baby because they know that's an important thing. (Counsellor)

6.3 Theme 3: State duty-bearer – 'dysfunctional' parent

The theme discusses the State duty-bearers' role in removing children from families, where the State, represented by Oranga Tamariki's Chief Executive, replaces the biological parents as the child's day-to-day parent. This 'in loco parentis' action results in significant duty-bearer responsibilities, making the child, as one legal participant described, "the property of the State" and "in State custody."

6.3.1 State intervenes – 'no parenting plan'

All participants discussed the State's role as a parent. They expressed the expectation that the State should do a better job if it intervenes in family life and works "in the child's best interests" so that the baby or child "flourishes" in care. Although Oranga Tamariki publicised "success stories" of individual young people in State care, participants had negative perceptions of the State's performance in this role, including the ability to provide the children stable homes.

> I think a lot of these structural forms of the State care system are intensely damaging. Like multiple placements where children ricochet through that State care system and the impacts of that in terms of their lack of association with people or places. (Policy researcher)

One participant described how a stressed and dysfunctional organisation, like Oranga Tamariki, has insufficient experienced social workers in child protection and a high staff turnover. As a result, the child in State care suffers from being denied stability of placement, and with high caseloads, social workers have little time to work either with the child, their kin or foster family.

> There seems to be no preparation around the placement of children. They can be very happily settled in their foster home and a social worker can pick them up from school and say you've got a new home, without any preparation. The foster parents are often left in the dark about the move too. It makes it very difficult for children to have stability in their lives if they are having to move homes and, with each home move, they have to change schools too. (Social worker)

A foster parent participant recalled knowing that the child in their care was being moved, and the social worker told them not to tell the child but just to pack his things while he was at school so the social worker could pick them up. “He [the child] didn't get to say goodbye. We knew he wasn't coming back, but he didn't know. We were told that that's what you’ve got to do. What a terrible thing to do to a little kid.”

The participants who discussed multiple placements believed that the changes in living situations harmed a child’s sense of belonging and well-being. One nurse commented on the effects of multiple placements, particularly on an uplifted newborn, saying “Ideally, for a baby, you want them to go to one place until they can go back to their families.” However, as most participants commented, this outcome is rare in the State care system, with most children having “multiple placements” and “little access” to parents or extended families.

Several participants described “social workers not looking wide enough,” or being “[not] skilled enough” to place a child with extended kin or in culturally appropriate care. Five participants gave examples of “inappropriate” care or responses to placements. For instance, a baby was uplifted from its young mother and given to her parents. These grandparents had badly abused the mother during her childhood, and the social workers knew this.

> This girl had grown up in violence by her parents, the grandparents, who were given the baby to look after. I have often thought, “Why were they deemed as a safe place to have this child?” It was very devastating. Devastating for the mother too and just adding to her trauma. (Community nurse)

A foster parent discussed offering temporary care to a child placed with Oranga Tamariki. Despite being told in the training sessions about weekend respite care, they could not get any, except when the social worker took the child to work in the office for a few hours. The foster parent got visibly upset when recalling a conversation with their foster child's very “inadequate” and “inexperienced” social worker.

> After one week with us, the social worker said to me… “So, do you want this child?” It felt like Oranga Tamariki were saying, ‘We really want to get shot of this kid. We don't know what the hell to do with him. Here you have him.’ That's what it felt like at the time. Oh, it was awful. It was awful. (Foster parent)

6.3.2 State as a ‘negligent’ parent

Two participants raised the issue of the Chief Executive of Oranga Tamariki being the child in State care’s legal guardian, yet in this role is unable to account for each child. This “deficit” practice has a long history, with one participant describing a previous Children's Commissioner report on an estimated 300 missing children in State care.

> Child Welfare knew where none of them went to. So, what parent doesn't know where your children are? I mean, if you don't know where they are, you're either errant, or you're really worried about it. (Senior policy advisor)

Another participant reflected on the 2020 data of an estimated 5,000 missing children in Oranga Tamariki's care. Their comments compared the position of Oranga Tamariki or the State as the parent of these children with how the State views dysfunctional parenting in general and the double standard State narrative.

> So, saying, “I'm a parent for 6,000 kids in care,” is manipulating the data and manipulating the story. “I'm a parent for actually 11,000 kids, 5,000 of whom I don't know anything about.” It's like 'runaways from home'. It's abandonment. If there were that many kids missing, I need to know why. You're a dysfunctional parent if the people you're supposed to be serving are running away from you. The narrative they are telling is still not the right narrative. (Senior policy advisor)

6.3.3 State as an ‘abusive’ parent

One participant recalled working with a mother who had her young child removed from her for a year. Her child was abused in State care, and after being returned to the mother, the mother

sought help for her child but received no State acknowledgement or support for her child regarding the abuse.

> This had happened because her ex-husband had made up an allegation. This child had been sexually abused while in care. The mother eventually got her daughter back, but her child had been really badly affected by what had happened. (Counsellor)

All 18 participants referenced the RCAC inquiry as an example of the State's inability to step into the parenting role or provide a safe, healthy environment for children to grow up in and be well-educated. Participants hoped that these victims would finally get recognition and support for the harm that had occurred. Several participants said the survivors who came forward were a brave minority, "just a tip of the iceberg." The general view was that most State abuse victims, including clients they knew, would not be in a position even with support to make a formal complaint, as they were still struggling with everyday life and just "trying to keep their head above water."

In summarising the impact of the State as a parent of the child in care, one participant who had researched this area for several years drew the following conclusions:

> When we consider things like children who were in State care and their access to leisure, to friends, to bodily autonomy, to unconditional love, to education, to their ability to participate in sports, the children's ability to make their own decisions. It's clear that the State often doesn't work for a child's best interests in all of those areas… going into State care entails significant disadvantage or loss of autonomy and friendship and everything else. The sense of family. All those things which, in any other kind of parental setting seem to be kind of fundamentals really. (Researcher)

6.3.4 "Children don't belong in State care"

The sudden "urgency" of the without notice uplift also means finding a place for the uplifted baby, child or children can be difficult for Oranga Tamariki. As one social worker said, "With tight time constraints, the baby can be placed with the nearest available foster care parent, regardless of how appropriate they are for the baby." As previously stated, a newborn baby or child can have

multiple placements within the first few weeks in State care, with multiple placements being the norm in State care. One participant described how important it was for children in State care to belong and be connected to something.

> As soon as they're in an alternate school, they're not allowed to play sports for the school that they've come from. It's crazy because they need to be part of something. So, trying to get Oranga Tamariki to agree to pay for them to belong to a sports club is really hard. Sometimes spending a little bit of money now getting them reconnected would have saved things in the long run. (Community nurse)

A common complaint was difficulty in getting Oranga Tamariki to pay for a child's extracurricular activity or any health or specialist care. One foster parent said they bought rugby boots for the child in their care, but then "Oranga Tamariki wouldn't let him join any school or sports teams." However, the child "loved to wear them when he played rugby at lunchtime at school."

A participant who had counselled children in State care talked about children's experiences being similar and, that their lives were "difficult and without stability." Several children physically and sexually abused in State Care had received counselling for "behavioural issues," often identified by the foster parent or social worker, but not intensive counselling for the underlying trauma. This participant described the impact of this lack of trauma counselling on the child or young person:

> It's extremely difficult for them on so many fronts. They form attachments to these people [foster parents] and then they're taken away and they don't understand why. They're constantly moving schools, so making friends, keeping friends, then losing friends if they've managed to make any, every time they move. Every time they're in with new carers, having to learn a new set of rules, a new set of expectations, often going through the process of trying to bond with their carers, who are more often than not inappropriate and non-kin carers. (Counsellor)

6.3.5 Long-term effects of State care

Several participants, nurses, midwives, and counsellors gave examples of teenage and adult clients they knew who had grown up in State care. After being removed from their family for years, these people generally did not have strong family connections.

One participant who worked with children and teenagers, removed long-term from their parents and living in State care, described how the lack of access to kin usually had severe long-term consequences for them.

> There's usually a part of the child, or the young person, or the young adult, or the adult, who always retains a sense of grief about the relinquishment or the removal. And that happens with all sorts of people really, who have had change of residence from the birth family they were born to. It was, and is always, a painful thing. (Counsellor)

Participants described this State care upbringing as producing "highly vulnerable adults," and their descriptions of these clients were similar. A community-based nurse said many of the former State wards were "so complex" as they had "multiple disadvantages," with trauma from physical and sexual abuse, and relationship violence, resulting in high physical and mental health needs, not helped by "very poor education" which made getting work exceedingly difficult. These comments reflected what most participants voiced, that the experience of being in State care as a child not only leaves "lasting damage" and "lifelong trauma" but triggers further State intervention when these State wards become adults. One participant described her experience of the lifestyle pattern she had witnessed over many years of working with young female clients, often mothers who had grown up in State care. Interventions were usually required because these clients seemed to have difficulty asserting themselves in society and, as a result, have difficulty identifying and accessing supportive relationships.

> The young women are likely to be with rougher men. Often, and this is generalising, there's lots of drugs and alcohol as well. We are seeing much more [of an] increase in violence in relationships where young women, under 18, that have been strangled by their partners …

> they have their friends around them, but I don't know how deep the relationships really are. I think they just lack having a really good adult role model in their lives. (Community nurse)

Growing up in State care had reinforced their personal vulnerabilities as adults, so that, as the participants explained, these young people are not "aware that they have any strengths." A participant, who had worked with young people over many years described the "typical" situation of young women who have grown up in State care without access to wraparound services:

> They often have not done as well at school. They often don't have great jobs; they lack positive role models too. So, if they do find themselves pregnant… they haven't got those skills. They haven't seen what a normal family is, or how to care for a baby. I think any young person who becomes a parent, it's not easy, but I think it's much more difficult for them. And I don't know if it's got any better, but there's their fear of [accessing] other agencies as well. (Community nurse)

Several participants mentioned this fear of State agencies, which can make it difficult for professionals to help, and how a "high degree of trust" is required to support the mothers or young parents. One midwife participant described how, in a potential care and protection case with a mother and a newborn baby, she needed to advocate for the mother with Oranga Tamariki as part of the process, a role she had undertaken several times:

> If we looked after a client who was at risk or who'd had previous children taken from her care, that would be something we would discuss early with her. We would let her know that we had an obligation to have input with social workers. The midwives in that case would really need to advocate for that woman. And if her previous history was such that she didn't have support mechanisms in place, might've been 10 years ago that she had a baby removed… I think that the midwives would be wanting reassurance that this time she had the support, and they would definitely advocate for her to get help. (Midwife)

Several participants described people's ability to change if they received the right help. However, positive change is harder when social workers or the Court take a "deficit" or "risk-averse" approach. One participant described helping a "very young" single mother who "lost her child

through neglect and her second [subsequent] child because the first one was taken." By working closely with the mother, this community nurse and her team found a family member ready to take the children. The mother could stay in contact with the children as they were with her family. This community nurse has strong relationships with clients "because their lives are complicated, you do a lot with them." Over the years, she has seen some clients "turn their lives around." She gave an example where a former client, who had two children removed, came back to visit her several years later, sharing how her life had improved. "Now she's in a settled relationship and has some children in her care. It was really nice to see this, and she still has the relationship with the two children that were taken."

6.4 Theme 4: State uplifts don't improve family life

In this theme, participants discussed the uplift as a State intervention on family life, why it happens, and its possible intergenerational implications.

6.4.1 "State uplifts are heavy-handed"

Several participants who worked in frontline roles in health and welfare talked about how "State interventions can be heavy-handed, especially when Māori are involved." They gave examples of uplifts where there was a perceived 'low-level' drug use, such as marijuana, in the family, or the family "wasn't perfect, but they were doing a good enough job and loved their kids." It was commonly perceived that families in these situations "could do with some help" but "not removing their children."

One community worker said there were "few urgent State interventions that improve family life." A former social worker elaborated, "when the State intervenes, it is with the overinflated assumption that 'we' [the State] can do a better job than the parents." However, participants felt this was often not the case, and referenced the abuse in State care inquiry and the abuse identified in Lake Alice Psychiatric institution (Smale, 2020, 2021a, b; Sutherland, 2020; RCASC, 2024).

One participant commented that Oranga Tamariki had become more risk-averse, leading to more early kin interventions. [Sykora (2005) reviewed the available literature to find the

characteristics of successful early intervention programmes.] However, the participant also acknowledged that if the early interventions chosen by social workers weren't appropriate, or appropriate for the kin, uplifts were likely to follow.

> But you would expect that early intervention should lead to better outcomes. The combination of what seems like earlier intervention and more children being uplifted at birth is a bad one. Surely social work should lessen the chances of a child needing to be taken into State care, because it is an extreme action. (Social worker)

Social work and health professionals described the risk factors that often threaten a positive family environment, such as "violent relationships, substance abuse and addiction, and mental illness." Several participants talked about family violence concerning women and children, and one social worker felt that "the State should assist and support the mother in eliminating these risk factors so she can care for her baby herself." All the participants who discussed this felt that "positive interventions," at the same time, the mother was pregnant, involving the partner and family, would "mitigate the necessity to separate mother and child at birth."

Several participants described how "traumatic it was for the mother when their children were in State care." They were "still a mother," but without their children in their care. This situation meant the State no longer considered them to be a mother or "the main carer," and so "if they were on a benefit like the sole parents benefit, it was cut, or their housing accommodation [funding] reduced." They could also not access social housing services as their children were no longer in their care. ironically, changes such as reducing the size or quality of accommodation meant that Oranga Tamariki social workers would not consider their new accommodation "big enough or good enough" for the children to return.

In the community, these mothers felt judged about their children being taken into care. They were viewed as "a bad mother," and often, they were "too ashamed or whakamā [felt inadequate]" to tell people. The latter response meant that often these mothers were not mentally and emotionally able to seek a reunion.

6.4.2 Public servants bully whānau seeking reunions

The uplift, as one participant said, is the “worst example” of a public service, with its origins and practice based in discrimination, racism, and largely without evidence. One frustrated whānau support person, who was also a senior public servant, said, “Once you lose your children, it doesn't matter that you do everything Oranga Tamariki tells you. It seems impossible to get your children back.” It is telling that even with the support of a very experienced public servant actively supporting the process of reuniting family, little progress with Oranga Tamariki was made.

Unsurprisingly, participants described the relationships between uplift families and social workers as “fraught,” and social workers who led the engagement were commonly described by participants who were family support people and foster parents as “bullying” and “threatening.”

Participants described the uplift as short-term problem that has become a long-term solution. Participants who provided whānau support reflected that the mother and whānau often think the uplift is temporary. Once the mother and whānau can mobilise support to approach Oranga Tamariki and request their child's return, they then realise the separation from their baby or children is longer-term and full of “endless delays.”

This “trauma” can result in “emotional outbursts” when mothers discuss their children, especially when dealing with Oranga Tamariki, the Police, or the Court. Some participants said, “getting upset” was “fairly common,” but it resulted in “a lack of understanding” and adverse reactions from the public servants working “on their case.”

Participants talked about ongoing trauma for the mothers who had experienced being emotional when dealing with their social worker or court staff while fighting to get their children back. All the family support people said the mothers received little or no help. An Oranga Tamariki social worker noted that in one case, “they [social workers] had no responsibility for the mother” after the uplift had occurred. Some mothers faced open hostility and judgment from social workers. Even if the mothers had not had mental health issues before social workers' judgment and the uplift, they would experience extreme mental and emotional anguish, “grief” and “trauma” afterwards. A

large part of this effect was about dealing with Oranga Tamariki and other State agencies who seemed to "collude," at worst, or at best "work in silos," so communication between agencies was inadequate or seemed "non-existent."

> We were never sure if the Oranga Tamariki meeting was a Family Group Conference or a hui, though the social workers seemed to prefer calling it a *hui,* so no meeting notes were kept or shared. Though, when we got to the hui, Oranga Tamariki had several staff there, including their lawyer. We were on the back foot. (Whānau support)

This whānau support participant mentioned the Family Group Conference (FGC), a legislated and formal process under the Oranga Tamariki Act 1989 that enables informed whānau or family-led decision-making. The outcome of this conference is to co-create a plan to support the child or young person's oranga (well-being) (section 18AAA). These formal meetings and their outcomes are documented and shared with all participants.

The whānau support participant's experience quoted above may indicate Oranga Tamariki staff were trying to avoid having an FGC by holding a very informal hui (gathering) where there is no legal requirement on staff to follow a proper process to involve kin and to operate in an appropriate way to progress and document a plan for the child and family. It was interesting that several Oranga Tamariki staff, including their lawyer, had been present in that instance, suggesting a more preplanned formal meeting structure that did not involve the family.

The participant, supporting a mother who had her children removed without any allegations against her proven, described how, in the hui, when the mother talked about the night her children were uplifted, and how some historical events had to be considered, the social worker rolled his eyes, turned to the children's lawyer and said, "Oh, here we go again." The participant described the two-hour meeting as "disorganised," "no meeting agenda," "no minutes," no outcomes," and a negative experience for the mother and her supporters, who witnessed the "bullying of the mother" from Oranga Tamariki staff and her ex-partner.

> It was really biased. I left after nearly two hours because I had to go back to work. I don't even think I was thanked for attending, but that's fine, because I don't think they wanted me there. (Senior public servant/whānau support person)

Most participants felt that while other agencies could improve their internal practices regarding bullying, racism and "unconscious biases," the lack of diversity and trauma-informed practice meant Oranga Tamariki could not be "fixed." Several participants hoped that the inquiries from the Hastings case would "devolve services to Māori, and in particular [to] Whānau Ora."

One participant admitted that social workers she knew working for Oranga Tamariki and other community providers have chosen not to refer to Oranga Tamariki because they do not trust the agency to do the right thing for children and families.

> They feel if it goes to Oranga Tamariki, they will completely lose control of it and things could go badly wrong. Whereas they feel like they can, by intensively working together as a family, and with friends supporting them as well, it's possible for the child to be able to remain safely with the parent or the parents. (Policy advisor and former social worker)

6.4.3 Separating mothers and babies doesn't make the issues go away

One participant noted that separating the mother and baby does not make the issues go away, though it may be a safe solution for the social worker. It was also "easier to find accommodation separately than to find a safe place for a mother and baby together."

> The combination of what seems like earlier intervention and more children being uplifted at birth is a bad one. Surely social work should lessen the chances of a child needing to be taken into State care because it's an extreme action. (Social worker)

Several participants mentioned that, in their experience, mothers who had had a child removed often got pregnant again relatively soon after. As one social worker explained, "In my experience, these women are not replacing the child removed, but the trauma of the loss of that child has increased their desire to mother another child." From adoption literature, this trauma, and subsequent feeling and action, are similar to mothers who have a child removed for adoption.

Social workers, health sector, and legal participants shared that very few situations need urgent uplift actions if social workers have worked positively with their clients during the early stages of the pregnancy and after the birth. In their experience, many mothers had grown up in State care, and the failure of the State to care and protect these women when they were young resulted in traumatic abuse situations. They felt that extraordinarily little State help was given to these victims when they were in State care.

Three participants mentioned “positive” interventions supporting the mother and baby. One example mentioned was the specialised mother and baby units in women’s prisons which give mothers serving custodial sentences a chance to parent with wraparound health and welfare support, including connection with their whānau who would help raise the baby. This Department of Corrections’ initiative, which recognises that babies require necessary attachment and bonding, remains a standalone government initiative. In contrast, “mothers who experience Oranga Tamariki's uplifts are not given the same degree of social worker awareness and understanding of attachment and trauma, or “similar mother and baby support in a community setting.” (Researcher)

Another participant described a successful Family Start (home visiting programme for pregnant mothers or kin with young children) early intervention programme and wondered why this service was not commonly known or available.

> A 17-year-old would end up in a hospital giving birth, having no baby clothes, no partner, no family support, nowhere to live, and no income. They met six out of 12 criteria for Family Start [intervention]. And the social worker would go, “Oh my God, ring Family Start,” and Family Start would turn up with the nappies and the clothes and the whole nine yards and wrap them around and look after that young woman and make it happen. The accommodation, the whole thing. (Policy analyst)

One nurse involved with teen parent units, often attached to, or connected with, a local high school said, “These parents do better than the ones that aren't in these units. It's quite a wraparound service.” Several participants mentioned that Whānau Ora were best suited to offer

family wraparound services for children, mothers and whānau. However, this type of help was difficult to access if social workers or nurses did not have community links.

6.4.4 Intervention needed but avoiding an uplift

One participant gave a detailed description of how some families and communities have managed without State Intervention in situations where there have been concerns about family parenting of children.

> For hundreds of years, there's been children born into families where there have been concerns about their care and the family and the community have mobilised around their child, and it still happens to some extent. There are still some under-the-radar arrangements that happen. I know that that happens in gangs when there are concerns about babies who are about to be born and things that are done to make sure that their child is safe in particular situations, and they happen. I know of middle-class families where they happen as well. I've known of people that I worked with who have deliberately chosen not to refer to Oranga Tamariki because they want to deal with it themselves. (Social worker)

All participants thought the practice of forcibly removing children from their mothers and whānau should stop, as it was a “cruel” and “harmful” practice. As one policy advisor summarised, “I think we should move away from forcibly removing newborn babies from their mothers and look to do things better.”

All the participants commented about the lifelong and wider family, and inter-generational effects of the uplift practice on a small national population. One senior public servant reflected on the long-reaching adverse effects of this public service intervention, and the failure of Oranga Tamariki and its predecessors to recognise this.

> The Hastings incident reminds you that the baby of that mother has got a grandmother and a great-grandmother who's living, who have got whānau, friends, relatives, neighbours, who may well have been in care in the seventies. And if you don't understand, when you run a

child welfare agency, that your population is the grandmothers and great-grandmothers of the babies you're taking, then you're in trouble. (Policy analyst)

6.5 Theme 5: Difficult history leaves a harmful legacy

This theme came from the participants comments about Aotearoa New Zealand's difficult history that has contributed to the current State uplift practice. Fifteen participants mentioned Te Tiriti in relation to human rights and the targeting of Māori, including relating to the uplift practice. Several participants said the "breaches of Te Tiriti" began in 1840, the same year New Zealand's first human rights 'partnership' agreement was signed. Typical comments were that violence towards Māori was tolerated and sanctioned by the British colonial government, subsequent governments, and settlers interested in gaining Māori land and resources for themselves. One participant said that despite "the myth of being an egalitarian society," Aotearoa New Zealand has never been this, especially for Māori. Participants discussed the uplift practice in the context of colonisation, deficit thinking towards women as mothers, particular "deficit" mothers, single mothers or Māori mothers and treating children and young people as "risky."

6.5.1 Ideas about the origins of the uplift practice

As part of the interviews, participants gave their perspectives of the origins of the State uplift practice in Aotearoa New Zealand. Several participants mentioned the work of researchers Mason Durie, Anne Salmond, Fiona Cram, Joan Metge, Moana Jackson, and Ana Mikaere, who cited early British colonisers, such as Reverend Samuel Marsden in 1814, documenting the respect for women and children, and the lack of family violence towards women and children, prior to colonisation. Their research, as one research participant noted, is "highly significant as it shows there was a lack of violence towards women and children in traditional Māori society," as compared with the British society the colonisers had left. One participant said a comparison between these two societies serves "to deepen our understanding of the cultural dynamics at play and sheds light on the origins of the practice of removing children from their kinship networks."

Most participants linked Aotearoa New Zealand's violent colonial past with intergenerational patterns of State systemic violence, family or intimate partner violence (IPV) and child abuse. A lawyer described the 'late' abolition of corporal punishment in New Zealand schools in 1990. They noted that, until the passing of the *Crimes Amendment 2007*, children hit by their parents and by people legally in the place of the parent were the "only human beings that could be assaulted without it being an offence."

Several participants commented that Aotearoa New Zealand's history of tolerance of violence towards children also extended to a "high tolerance of violence" towards women and mothers in the family home, with Māori women the most common victims. Three participants mentioned the violence legacy towards women extended to single women and unwed mothers and their children "forcing them into poverty or forced adoption or their children sent to institutions." Participants spoke about the State closed adoption programme – that discriminated against Māori, women and children and isolated Māori by assimilation as having a foundation for the current uplift practice.

Two participants, a social worker and a researcher, talked about State care having its origins in nineteenth-century Britain, putting "poor, abandoned or orphaned children" and children who committed petty crimes into institutions. Children were judged differently and were put into a hierarchy of different institutions, depending on whether they were considered "poor, mad or bad or risky." Ten participants described the colonial government and then later New Zealand society and the public service to this day as having a strong desire to incarcerate or remove children and young people who did not behave or did not behave in "the right way," and then largely "forgot about them."

> This whole idea of children being out of control has been really resonant for centuries… it's this kind of idea that children pose significant risk to adult society, and they're often regarded as symbolising the demise of morality or the demise of good progress and all of

> this. So, I think, we see this repeatedly through different generations in different ways. The rise of the teenager or, even… with the rise of young activists, climate activists. (Researcher)

The State 'boot camps' for young male offenders or 'risky' male teens were places of great violence was another example mentioned by two other participants. Boot camps' are still relevant In 2024 with the first 'new' programme, with an intake of 90% young Māori males, established by the government in July 2024 in Palmerston North and led by Oranga Tamariki.

6.5.2 Plunket – "incompetent mothers" and "State-sanctioned racism"

Several participants discussed the Plunket Society set up to "improve child mortality rates. One midwife said, "It did this by taking the control away" from mothers and their female support networks, who were deemed "incompetent" and "ignorant," and "making the hospital and uniformed professionals, the experts" in a new kind of "scientific motherhood" where feeding babies on demand or picking up babies outside of the schedule was not encouraged. Although several participants mentioned that some Plunket nurses "did a lot of good," and that the Plunket practice had modernised in response to their multicultural communities, they recognised that there were "harmful practices in the past."

One health researcher talked about Dr Truby King, who was also New Zealand's first Child Welfare Officer, as having "extreme racist and misogynist views." This participant felt that King's legacy towards Māori women as "incompetent mothers" and low-income families as "risky" has largely gone unchallenged. Several participants, including the health researcher, described how these views, including King's support for eugenics, informed the State practice of uplifting children.

Four participants commented that Plunket influenced the education system by introducing compulsory domestic education for girls in all secondary schools. As one participant described, "this was a continuation of the dominant British colonial attitudes about gender differences and the role of women's place in society as secondary." The introduction of "scientific motherhood" for girls in high school promoted girls' primary role as being "mothers" and domesticated. It also meant that "they had less curriculum time studying the subjects which led to employment than boys did." The

reinforcement of the notion that "a woman's place is in the home" ensured women continued to take "primary responsibility for household and child-care tasks."

Three participants said the Plunket Society, with their home visit checks which included monitoring the housekeeping, created anxiety for generations of mothers and pregnant women about not being "good enough" mothers. These participants believed this anxiety about mothering is still evident today, and more so for those women who have grown up in State care and who had received "little mothering" themselves.

Several researchers commented that the Plunket programme, with its eugenics foundations, was "State-sanctioned racism," and "for many years, Plunket did not help Māori at all." One participant who had extensively researched Plunket's history gave the following summary.

> So, there's Truby King on that front [eugenics], but also Truby King in the Plunket origin story, which is Māori midwives going to Truby King and saying that we want help, and Truby King turning that request into a licence to tell Māori mothers that their breast milk was inferior. And those kinds of things that the Truby King movement did. (Researcher)

6.5.3 State closed adoption programme destroyed families

Several participants were knowledgeable about adoption. One participant said in the 1960s and 1970s, many mothers who had children removed into State care or had lost them through forced adoption ended up in psychiatric hospitals. She noted that "the act of adoption had ruined their lives" and that there was no recognition of adoption trauma till more recent times.

Participants talked about Māori and the impact of intervention actions by Oranga Tamariki, and its predecessor agencies, being "intergenerational." Most participants talked about the effect of the removal of Māori babies from their mothers and the denial of their Māori identity. One participant cited Maria Haenga-Collins's (2017) thesis, *Closed Stranger Adoption, Māori, and Race Relations in Aotearoa New Zealand, 1955-1985*, as highlighting State practices that illustrated this intergenerational harm.

> When you go back to the 1950s and sixties… more than one in 20 babies were taken from their generally teenage unmarried mothers. Now Maria's [Haenga-Collins] work was interesting. I never thought about it before… these girls, when they were non-Māori, often had Māori partners or a Māori father of their child… and if they [fathers] were Māori, they were left off the birth certificate. And that was a really interesting dimension that she uncovered that I think we hadn't really paid much attention to. (Researcher)

This deliberate failure by staff in State agencies to document the father also extended to Pākehā fathers. One experienced social worker, who had helped adults adopted as children under closed adoption to search for their birth parents, said it was common to have the name of the father blank or the words "unknown" for the name of the father on the original birth certificate. She felt that, in most cases, "the father was known." This practice she believed allowed "generations of men not to take responsibility for fathering a child, and generations of children not to have the complete genetic picture unless their biological mothers gave them the full details."

Another social worker described how society took the side of the unmarried father in the days of closed adoption, believing that "Most unmarried fathers weren't expected to take any responsibility for their child as pregnancy was seen as the fault and sin of the unmarried mother." This social worker also described how many Māori children who went into State care from birth through non-kin fostering lost their Māori identity, as they were placed with Pākehā foster parents with an intention to be culturally assimilated.

> When Māori children went into State care, they were consistently identified as Māori, by the public servants, without any acknowledgement or recognition of this culture, nor recognition if they had a Pākehā parent and a Pākehā family who could also take responsibility. (Social worker)

Two participants familiar with adoption research discussed the Adoption Amendment Act 1985. That Act gave adopted people and the parents the right to contact and know each other, provided both parties consented. Nonetheless, one participant commented that "adopted children

could still be utterly cut off from their blood relatives" and the "biological family in open adoption have no legal standing, because the is still the dominant legislation in place." Four participants said, for over 30 years, people have lobbied Parliament to change the Act. Still no change had happened to bring this law in line with human rights and UNCRC (1989) articles on the child's right to identity and to live or know their biological family. A lawyer described how the current legislation, the *Adoption Act of 1955, sanctions the separation of kin*.

> All blood relatives cease to be relatives of the child, and in some cases the father ceases to be the father, without being given any opportunity to disagree or be heard on the adoption order, and that breaches the very important principle of natural justice in the Bill of Rights Act. This takes away a huge right and that's particularly important with Māori children adopted by Pākehā families, because the children have their relationship with their whānau, hapū and iwi immediately truncated – parents, grandparents, uncles, aunts, siblings, step-siblings – they are all gone. (Lawyer)

6.5.4 State-sanctioned removal of children from whānau

Several participants talked about Māori urbanisation, which began significantly increased after World War II. As a result of "the massive loss of land and diminished economic opportunity," Māori moved into the Pākehā-dominated towns and cities for work, living in smaller nuclear family groups. Māori, especially children, received attention from Pākehā State agencies and local authorities. One criminology researcher said this "visibility" was the reason that when young Māori children and teenagers would "just be hanging out" on the street, Police or Child Welfare would "pick them up."

> I suppose that kind of dovetailed with Child Welfare strategies to discover delinquency and, to kind of pre-empt delinquents. Māori children got picked up really quickly. Māori children, in particular, would be far more likely to be institutionalised than go into foster care or to be whāngai. (Researcher)

This participant and three others talked about the State targeting Māori boys through State care and the youth justice system. One participant talked about a significant piece of policy research work conducted in 1967 which identified this problem and led to no significant change.

> In 1967, the Child Welfare division initiated a survey of every boy in New Zealand. They got 500 questions answered of every boy in New Zealand. They followed them up until they were aged 24 in the justice system. They produced this extraordinary work in the late seventies that demonstrated that we were putting seven times more Māori boys into care than non-Māori boys. That we were taking Māori boys into care at 13 and 14, and non-Māori boys at 16. You can follow it through the justice system and their experiences later on, and yet [from this significant report] let's change nothing. (Policy analyst)

The participants' comment about evidence-based reports, policy and practice failing to change is a recurring theme in this research and will be discussed further in Chapter 7.

Several participants mentioned the "powerful" *Pūao-te-Āta-tū report* (full title is *Ministerial Advisory Committee report on a Māori Perspective on the Department of Social Welfare 1988*), led by John Rangihau, which highlighted racism in the child protection system. Another report mentioned was about the abuse of children in the Lake Alice psychiatric hospital. The participants who discussed this report noted that, although those reports had "a significant impact" on them personally and their individual practice, "the State agencies concerned, primarily ignored them." These reports, participants said, were included in the current State Inquiry into abuse in State and faith-based institutions.

Several participants talked about how the State targeting of Māori resulted in young Māori going into care and prison, especially in the 1970s and 1980s, and its lasting compounding effects.

> Your chances [if you were Māori] of being put in a boy's home back then were, I think, about seven times higher than for Pākehā. Now those men are the grandfathers of today. So, the chances of a baby coming into care are hugely increased if the parent or grandparent has been in care and it's kind of like a double, triple whammy that's happening. So, the effect seems to me like it's kind of multiplying. (Social worker)

One participant talked about a positive public service family reunification initiative for children living in State care, which could prevent uplifts today. Child, Youth and Family, which became Oranga Tamariki in 2017, introduced this programme to support children living with kin, after changes to the *Children, Young Persons, and their Families Act 1989*. This participant felt this programme was "excellent" as it focused on strengthening-families and keeping children within their culture but was mainly ignored and not funded by Oranga Tamariki.

> When the 1989 Act came in, there was a real emphasis on family search, so about finding whānau, hapū and iwi for Māori and wider family for non-Māori. There were people called matua whānau social workers. They were not replaced after a time. I don't know what happened, but it was no longer a priority. (Social worker)

6.6 Theme 6: Public sector barriers to change

This theme identifies some of the barriers that participants experienced in the current public service which prevents them from providing best practice service to clients and the community.

6.6.1 Public service is a British colonial legacy

One researcher participant commented, "British colonial ideas greatly influenced the development of our State agencies." Five participants thought that a legacy of being a British colony and adopting much of that society's public service meant that Aotearoa New Zealand was still looking to Britain, including recruiting and appointing very senior public servants into the top levels of management who had never lived in this country. Two participants described that practice occurred in the senior leadership formation of Oranga Tamariki in 2017. This practice reinforced the British public service model and some class system ideas, attitudes, and practices.

> These senior public servants appointed to mainly Pākehā senior public sector leadership ensured a "status quo." Through their ignorance of Te Tiriti, these senior leaders dominated a system that marginalised Māori and poor Pākehā. (Senior public servant)

6.6.2 Oranga Tamariki, Ministry for Vulnerable Children – a Deficit Model

Participants from social work, policy, research, and legal sectors talked about the establishment of the Ministry for Vulnerable Children (sic) in 2016, identifying its very name as reflecting "the deficit model" and that "colonial" legacy way of thinking and practice. As one former social worker said, "They replaced 'Child, Youth and Family' which put the child and the teenager within the context of the family" and thus recognised the bioecological view.

Several participants mentioned that when it became apparent after the Hastings case in 2019 that Oranga Tamariki was targeting young Māori babies for State care, Māori lawyers, midwives, and social workers' professional organisations complained about the use of the Māori name and the service "which did not uphold the mana of the name and the mana of tamariki and whānau." They called for "a kaupapa Māori and strength-based approach agency," to ensure tamariki remain connected to their whānau. Participants talked about the "total disregard" for more appropriate names presented to (then) Minister for Children, Anne Tolley, Parliament, and the State Services Commission. It was not until the (then) Children's Commissioner, Judge Andrew Becroft, and members of the public complained that the name was changed to its current Māori name, Oranga Tamariki, which means "protecting the well-being of children." One participant quoted as Becroft pointing out, "Would we rename the Ministry of Health the Ministry for Sick People?"

A participant who counselled social workers described the workplace stress for Oranga Tamariki social workers. Even though the organisation had only started in 2017, barriers to "good practice" existed.

> When you get into an agency where it's not a healthy atmosphere and not a healthy culture and there's a lot of demoralising, and not enough professional development and nurturing and chances to be able to have some teamwork in a way that people can be authentic about their vulnerabilities. There's not enough attention paid to nurturing the wholeness of the social worker, I think, and the authenticity of the social work. Everybody has to be perfect

> and get the records up to date rather than what's going on with the casework, the clinical work, and [so] people [employees] get out as fast as they can. (Counsellor)

6.6.3 State agencies' deficit model harms people

Most participants stated that the effects on babies and children who go into State care are that they have a difficult time as adults, as they are not free from the State overseeing them or making judgements about them. Participants who had experience reviewing clients' files commented that negative judgements and wording were written on the files they had seen. For babies born in hospitals, many of the first notes written on their files are negative comments about their parents, but particularly their mothers. Several participants recalled the harmful, destructive and "just plain wrong" comments they had read on clients' files. The client was often aware of these comments and felt they could not challenge or change the comments even if they had tried to at the time. One researcher who read several hundred client files found a pattern reinforcing the former State child's inability to move on and create a new life.

> So, people find that even 20, 30 years later, they are still manacled to their files… So, you've got stuff from Social Welfare and Justice and Corrections and Health, and psychological reports, and it just goes on and on. To actually see the amount of 'cut and pasting' that happens. So, you can identify something that happens when a child is maybe six, seven… the same language is applied when that person is in their 20s and they stick. Those kinds of deficits really stick - this kind of idea that things cannot change, or it's like a risk to allow change, to go to do something else. And of course, a lot of our institutions are highly risk-averse. (Researcher)

This point is crucial because it relates to other participants' comments about the number of mothers who were former State wards and the targeting of these mothers, seen as "risky" by Oranga Tamariki, for the uplift of their babies. Two social workers talked about the deficit model and its link to identifying "at-risk" children, mothers, or families in child protection practices over the past 40 years. Social workers, counsellors and researchers talked about practice which focuses on

"what is wrong with the individual," their family and community, "as opposed to a strengths-based model which works with the strengths of the individual, their family and community as in Mason Durie's Te Whare Tapa," other bioecological models such as Bronfenbrenner's (1979), and strengthening families programmes like Whānau Ora.

Four participants commented that the use of government inter-agency "data-matching," supported by Approved Information Sharing Agreements (AISAs), enabled the reinforcement of who is "at-risk" or "risky," and holds individuals to their pasts. One participant commented that this data-sharing unfairly targets Māori, as was reflected in the Hastings case by Oranga Tamariki in May 2019.

> The public service though politically neutral, the decision makers aren't… people are still using data as a way to control and punish and justify things that go against our Treaty governance. It goes against the things we know to be right. So, it wasn't just that I was concerned people were linking all this data. It was that they were linking it and then using it to justify populist action. So, while that Hastings example happened under this government, and what I'm talking about happened under the previous government, the roots, the foundations are all there. (Researcher)

6.6.4 Senior leadership lack commitment to Te Tiriti o Waitangi

Participants who had worked in central government felt a direct link between poor quality leadership and a lack of commitment to Te Tiriti. As one senior policy analyst said, "If you look at the State Sector reforms that are proposed, it's woeful about how it talks about the Treaty of Waitangi. It talks about lifting the competency of the public service, and that's embarrassing."

This policy advisor identified a problem that other participants also raised, that the State sector and public service leadership are not leading the challenge to have the government sector put Te Tiriti into action. The advisor commented that "They have failed as a Tiriti partner to enhance relationships with Māori public services."

One senior public servant reflected on beginning work in the public service in the 1980s where "there was a massive resurgence and concern about understanding Te Tiriti o Waitangi and te

ao Māori." This person believed that much public sector and community effort and commitment went into learning and development programmes. When comparing this experience with current times, this senior policy advisor observed that "over the last decade, that knowledge of Te Tiriti is quite poor in the State Sector. So, in many respects, I feel we're actually behind where we were in the 1980s."

Two participants lamented the lack of status for te reo Māori compared with Aotearoa New Zealand's other official languages; for example, sign language was prominent during official government COVID-19 live announcements on television in 2020 and 2021. With far more people living in Aotearoa New Zealand speaking te reo than people who solely sign, these participants felt the medium should include all three official languages, but a decision was made to not have te reo.

> If you're looking at the Treaty responsibilities that requires the Crown to do more to promote internally. And they're still not. Internal Affairs still requires deaf viewers to be catered for and Māori language ones not to be, which is quite interesting. (Lawyer)

A policy participant talked about the lack of awareness about viewing Māori as a Treaty partner, and the lack of understanding of non-Pākehā groups or people with disabilities. The approach to "including others" was "often tokenism" or "an afterthought" to mainstream strategies and programmes designed for Pākehā.

> Sometimes Māori and Pasifika are combined as though they are the same. When I worked in the public service in the 1990s, people understood the Crown's responsibility to serve Māori better as a Treaty partner, and Pacific people weren't really part of this conversation. Now they are, and there is this risk of merging them. (Policy advisor)

As referenced by several participants, Aotearoa New Zealand's social policy and practices have been mainly influenced from overseas. From the early colonial days, the influences were, and still are, strongly British, with more recent practices adopted from North America (the US and Canada) and now Australia. In the last decade, participants felt there was a stronger influence on social policy from comparison with some Scandinavian countries. However, as several participants stated, Māori as a Te Tiriti partner, have asked for and protested about the right to be included and

to have their ideas and actions recognised and funded by Parliament and government departments since 1840. One participant with policy and legal skills talked about their experience in the Ministry of Health several years ago, with colleagues in the legal sector who did not have any Te Tiriti competencies being promoted over others who had those skills.

> I think about them more as tauiwi - they're trained overseas, they are educated overseas. They come to New Zealand in their thirties, and we're supposed to be grateful for the skills they bring. Some of them have very good legal analysis. I wouldn't question that, but I do question if that's enough to be promoted to higher levels in the public service. So, how can you get a health and disability system that is Treaty-compliant? (Policy advisor)

Three participants talked about Oranga Tamariki's active recruitment of social workers from Britain and overseas with one social worker saying, "with so many Māori in care, this background does not help as it just adds to the existing pool of social workers who already do not have community or iwi connections to support the clients."

Participants generally believed the development of government policy and practices needed to be done with and from the people concerned, not from the "top down." Examples of this approach working well were Whānau Ora, and iwi agencies. Several Pākehā participants made similar comments, with one noting that "Too many of the initiatives for Māori and diverse groups are led by Pākehā, when they should be led by their own leaders or co-led, but not Pākehā-dominated."

One participant who has worked in the national health policy area described trying to get attention and resources for Māori with high health needs, including planning for the disability sector.

> There are also massive areas of inequity for Māori. I think a lot about this. One example of this is Māori with lived experience of disability, and the level of attention Māori disability policy gets within the Ministry of Health is negligible. And I think that that's still true now. It was absolutely true three years ago, four years ago. I think it's still true now. (Policy advisor)

Several participants believed that most State agencies lack the expertise to partner with iwi or Māori NGOs to reduce inequality. Those staff with relevant skills "burn out" because "they have to negotiate with managers and justify their actions or relationships constantly." One former public service manager described this problem, "With the stumbling block of poor leadership recruiting people like themselves, it does not widen the pool of staff to have more networkers and people able to walk in multiple worlds." Another senior public servant described the ideal leadership.

> If you'd look at it as a model, there is so much more potential for the sort of leadership that Whānau Ora has and the relationship and connection with those communities than what the public service one does. (Public service manager)

6.6.5 Public service managerialism

This section starts with the historical context provided by two former public servants who began their careers in the late 1970s and early 1980s, recalling there were very few female managers in regional and national offices. One former social worker recalled her first woman manager as an "exceptional manager" in her social work practice and management skills. She encouraged diversity in her team through recruitment and in the 1970s employed the first Muslim woman social worker in the country. The same participant recalled that she had no other managers who were "forward thinking" for the rest of her career.

Several participants talked about the current context where Māori women are not able to progress professionally beyond a certain level in the public service, "particularly if they were strong Māori leaders." Several participants talked about the discrimination and lack of opportunity that some public servants have experienced in the hierarchical public service. However, four hospital practitioners said this practice also applied to health sector appointments.

One researcher who talked about "the rise of managerialism" in the public sector and said anyone from the private sector could rise quickly in the public service, without having public service experience. A common example given by participants was Oranga Tamariki's first chief executive Gráinne Moss who had private rest home and corporate experience, but not child welfare or

experience with Māori providers and “despite failing at Oranga Tamariki” had been moved into prominent public sector roles. The researcher explains the “neoliberal” thinking.

> “They [managers] can move from managing something in New World [supermarket chain] to heading a little team in Corrections or whatever. And it's just like; you're just changing sales of beans to movement of a muster of people [checking the number of people in a prison]. Where there's absolutely no connection to what is happening on the ground. There's no understanding of that. And it doesn't matter. (Researcher)

Participants felt this approach and the need to constantly bring in consultants and contractors for big programmes had a twofold intention: bringing in some necessary business skills and input; and a failure to recognise that some highly capable public servants could “step up” to do these roles. Instead, as one person said, it reflected the commonly held public view that public servants were “useless.”

One participant felt a lack of professional oversight from the Public Services Commission, as some Chief Executives were not appointed through a planned continuing professional development process, unlike in other professions. The cronyism occurred again, they felt, when these Chief Executives may “recruit second-tier people, many plucked from the private sector, because they want to have the commercial nous, which is all well and good, but what's the development pathway for these people to actually understand what is and isn't appropriate, and to school them in the ethos of public service.”

A senior public servant described the “new breed of public service chief executives” as individuals who were “quite hard” to work with. They did not understand many aspects of the public service and lacked “deep knowledge of government conventions.”

> These chief executives are very driven. They are star players. The wording I've had used to me is, “I'm more concerned about my personal brand,” when we needed to make a decision about something. Now that's untenable in a public sector leader. Your personal brand is irrelevant when you're there to deliver state services. (Senior public servant)

6.6.6 Risk-averse public sector leadership

In recent times, public service leadership, was seen by many participants as having become more “risk-averse.” Participants in central government talked about reports not being released or being so heavily redacted that the released reports did not make sense. (This was the case for the 2019 Oranga Tamariki Hastings Case practice report.) They also believed that some evaluations, research, and surveys were not undertaken if the data was likely to tell a negative story that impacted on a chief executive’s or senior manager's position or brand. One participant remembered the words of a chief executive, who is still working at the same level in the public service, who did not want a client survey, saying to the participant, “No, I don't want a survey. It's just going to tell us bad news, and we don't need to know that.”

Participants gave their views about working in organisations led by managers who were so risk-averse that no significant change or progress could occur. One senior manager described their perception of how innovation gets stifled.

> There's so much risk-aversion, so many people wanting that security, I guess. So, the innovation’s not there, and we're not going to get different results from doing variations of the same thing, which is what Oranga Tamariki does. So even when you have a mandate to do it completely differently, they [staff] find it very hard to do. (Senior public servant)

Another participant described how often feedback and complaints processes were altered, not promoted, or not completed in case the responses were “critical” or “negative.”

Participants working in head office public sector offices were familiar with recent State sector reforms. Several participants felt the recent Public Service Commission’s key documents lacked a basic understanding of Te Tiriti partnership and had “old fashioned ideas” about this crucial relationship. Two participants mentioned that the dominant thinking is still to have only one kaumatua or one Māori public servant in the senior leadership team to cover all aspects relevant to Māori. They felt the right leaders were not in place to provide the appropriate leadership.

For the public service to change and be an effective Tiriti partner, participants felt leaders with the relevant and sufficient skills and expertise to partner with Māori, were needed.

> Public servants have to talk about institutionalised discrimination. We do have to talk about how these things are absolutely propped up and filtered through our social structures and our economy and our politics and our education system and everything else. We've got to be made to feel uncomfortable about these things. (Public sector researcher)

6.6.7 Public service cronyism

Five participants said cronyism also occurred, due to Public Service Commission appointments and people "appointing their mates" at the central government level. A common issue was that cronyism at the most senior level in the public service had enabled a certain type of manager and "groupthink" to thrive over the past 20 years, but it also made it difficult to trust the people these managers appointed.

Four participants talked about how the traditional public sector organisational hierarchy enabled some managers to act in ways that negatively impacted on other staff and failed to acknowledge their input. They felt these actions were done in order to impress their reporting manager and to rise in the hierarchical public service.

> Government agencies are hierarchies. And so, there were always people wanting to get higher within that hierarchy… And I know that there are people who can do that without pushing others down, but that's not the well-trodden path. The well-trodden path is to do that in a way that minimises other people [and] that is relatively disrespectful. (Public servant)

Several participants raised the point that the personal attributes of some of their workplace leaders mean they are unable to connect effectively with staff or are unable to lead a team well. Yet, their managers do not acknowledge this, and the staff suffer from that inadequacy.

> I do think we have many leaders who are inadequate, inadequate as leaders, not because they intend to be mean to you per se. It is actually that they're lacking empathy. They don't

> understand, they don't get it, and they have all the power, so they don't understand the power and [im]balance. (Policy advisor)

6.6.8 Positive, collaborative public service leadership

Several participants talked about the mosque massacre in Christchurch in 2019, and COVID-19 in Aotearoa New Zealand, and how these events have given rise to a new, more positive form of public service leadership, as represented by the pandemic-period Prime Minister, Jacinda Ardern, who spoke about "kindness" and "caring" for each other. One participant described the former chief executive of the Ministry of Health's leadership during COVID-19 outbreaks (2020-2022) as one such example of a positive, collaborative leader.

> Because he is a health expert and a public health expert, he knows the world he is in. He knows the vulnerabilities. He knows both the science and the operations of his area. He's able to communicate that, but he's also able to get people of different perspectives in the place… the scientists, the operation side. And so, in a way that the head of an organisation is actually an arbiter of competing fields of knowledge and expertise. And if you can't do that, you might as well just play pickup sticks. (Researcher)

6.6.9: "Yes, Minister" dilemmas and "free, frank, and fearless" advice

An essential part of being a policy analyst in the public sector is analysing evidence and presenting it to ministers to help them with their decision-making. One senior public servant described occasions of giving "free, frank, and fearless" policy advice to a Minister via the briefing papers and the comments received after this from "surprised" policy colleagues who had chosen not to give evidence-based advice as part of their public sector practice.

> I've got examples of when I gave advice to Ministers and I had people ring me up and tell me I was being courageous, which I think is coded language. Thinking about that specific time, the advice was probably unpopular, but I wouldn't say it was courageous. It was what the evidence said. So, I think by people telling me I was courageous, they were kind of signalling that it is unusual to give evidence-based advice, and it is unusual to do that in a way that's in

> writing. And it's unusual to give it all the way to the Minister. Like those are the kind of things they are signalling to me. And to me, that seems against what we've signed up to do as public servants. (Policy analyst)

Several senior public servant participants in central government talked about the complicated relationship between public servants and their Ministers. Participants said more collaboration is needed under New Zealand's current political mixed-member proportional Representation (MMP) structure. Cross-party democratic governance makes the public servant's job more difficult and has resulted in more political staff in Ministerial offices than government department portfolio public servants. In the past, the political staff did not provide input into the advice the government agency staff gave. Some participants said the political staff are now directing these policy staff on what to do and write. One policy advisor stated that not all public servants are strong enough to stand up to this pressure, and some are the *Yes, Minister* [1980s British comedy] variety, meaning that policies can "be made on the hoof" and are very short-term.

> We change governments and then they'll change all their ideas, and they'll take away funds and services. We just need to all agree on certain things and to follow it through, for a decent period of time… because we waste so much money by them [Ministers] changing their minds, changing the names of things. (Policy advisor)

Two participants talked about government inquiries set up by Ministers that were so narrow that "the real issues" were not found or discussed, or, when inquiries were conducted well, the recommendations were ignored. One justice sector researcher said, "It's a real problem about Commissions and inquiries, because we've had lots of inquiries. They've had loads of brilliant recommendations and nothing really shifts. Nothing really, really shifts."

Another senior public servant who had worked in central government for 30 years reflected on the professional public servant's role of advising a Minister in the current MMP environment. This role requires a high degree of sophisticated navigation and the ability to build relationships. It

requires ‘free,’ ‘frank,’ and ‘fearless’ advice based on awareness and a high degree of understanding of a Minister's needs.

6.6.10 “Culture of silence” versus “speaking up – challenging poor behaviour

The lack of leadership, poor management and bullying were perceived as still present in both central government and local public services such as hospitals. Participants who worked in hospitals, referred to them as a traditionally very hierarchical workplace. Bullying of young medical and nursing students while on training placements was common. One midwife reflected on her experience of this behaviour and identified a responsibility of senior people and colleagues to challenge this inappropriate behaviour. To do so requires great courage, as this midwife elaborated.

> I see young medical students and midwifery students and people in health… put in awful situations where they don't have the support. Some people do their training and don't even want to practice because of the experience that they've had. So, we can make a huge difference to people by just changing your behaviour and challenge poor behaviour at the time. I think you need to have people who feel able to challenge, and I think you are getting more and more people through who won't stand for that. And it only takes one person to do that. And often there'll be people clapping in the background, but it's hard to be that person sometimes. (Midwife)

Bullying was identified by participants, often in the context of clashes with their manager when they, or other frontline staff, were working with clients in a strengths-based way and achieving some progress, or when they were working with other agencies, especially community agencies, to achieve a better situation for the client. The effect of this bullying was to ‘undermine’ the person professional capability and ‘reduce’ their ability to work in ways and seek additional support that was more appropriate for a client. It also meant that managers could take the staff away from certain clients or initiatives where they “were making a difference,” resulting in negative consequences for the client, or the initiative to struggle or fail, often as a result of pulled government funding.

Several participants commented that key current public service leaders have a well-known history of bullying, and that it is ironic that they lead anti-bullying, Te Tiriti, and anti-discrimination initiatives when they have personally demonstrated a lack of integrity in their career. As one public servant said, “That's a bully leading diversity. It just doesn't ring true. It's not like this is a hidden thing.”

Participants discussed the organisations where they had worked, and the many public service reports on bullying. Most participants interviewed had been bullied and also told stories of other people being bullied. Despite the many staff complaints and research reports, participants felt “nothing happened,” and little was done to address the poor behaviour of managers who carried on “micro-managing” and “controlling” their staff regardless.

Several participants talked about the repercussions of speaking out. Despite New Zealand having employee protection from repercussions since 2000, in the *Whistle-Blower's Act 2000,* participants said that, in their experience, most whistle-blowers suffer from loss of job opportunities in the long term. Some participants had left their jobs because they either did not get support when they spoke up or felt unable to speak up about poor behaviours and practices. One nurse commented how bad some workplace behaviour can be, and how the workplace policies need to support staff to challenge unacceptable conduct, so that doing so becomes the norm.

> I think it's unacceptable today to have bullying in the workplace, but you do still see it. And doctors aren't immune to that. Unfortunately, there's some really bad behaviour out there by doctors, midwives, and nurses, all of them in every area. And I think we've got to be more proactive, and we have to be better at sticking up for other individuals and not be an enabler of that kind of behaviour. People are much more aware of that today and we have a really good programme at my workplace. (Nurse)

6.6.11 Barriers to public service collaboration

Participants who worked in the operational frontline felt that their organisations' hierarchical structure and poor leadership prevented them from working in the best ways to support

their clients; participants in the health sector talked about the need for "continuity of care," and social work participants talked about "holistic care" and "child and family-centred care." Social work participants and researchers described how children should be nurtured within their family. They gave examples of holistic development models that could help reduce the need to remove children from kin, including Pā Harakeke, Te Whare Tapa Whā, Te Wheke and Bronfenbrenner's Bioecological Systems (refer to Chapter 4). These participants talked about how these models relating to supporting children and their families required more than one agency involved. One person stated the adage, "It takes a village to raise a child." However, it was "very difficult" to do inter-agency collaboration within their agencies, as often the management did not understand the need to collaborate, or the human bioecology models. The lack of managers' support restricted staff members' time or ability to work collaboratively with other agencies, community partners or extended whānau. Participants talked about fostering key partnerships and networks outside of work time to achieve better support for clients.

The need for more quality services for clients in the right location was also raised. The search for vacancies in these services took much time. The focus on early intervention was raised, with one foster parent participant saying, "More funding of child-centred services so that children can get the necessary help when they need it, not waiting months or years to access help."

Most participants identified that more work should be done at the earliest stages of intervention to keep children with kin and out of State care. A social worker detailed why timely action is important.

> Adults who have spent most of their childhood in State care have difficulty with day-to-day family life, as this is not something they have experienced in a positive light. I think if we look more closely at the strengths of the whāngai model so that children are not placed with strangers but with kin or people connected to kin. And these people are resourced so they can do this well, instead of struggling [so that] the child can end up in State care. (Social worker)

Another social worker said the lack of adequate State support means that well-resourced families with kin in a crisis do everything they can to avoid any State intervention.

Participants were critical of the way government organisations are funded or organise their funding, so there is no shared or cross-agency funding around clients and whānau, and community programmes. As a result, managers would not commit staff to work collaboratively unless their agency was both responsible and funded for leading the work programme or the relationship. Moreover, the construction of contracts limits what practitioners can do.

> In the health sector, it starts at the Ministry of Health, central government, because they set the targets, they set the contracts, and it's about the contracting in the end. Sometimes you get restricted by what the contract says you're supposed to do versus what you could do. (Nurse manager)

Several participants commented that this resistance and the inability to work holistically did not fare well for partnering with Māori in a Te Tiriti model.

> I guess it starts at the top and what the expectations are. And it's about trying to be more holistic in its approach rather than being siloed and then having these set targets that people are focused on doing rather than, focus on working together. We still don't talk to each other across agencies. If we make contact, it's person-driven rather than a work obligation or contract-driven. For education and health, we need wraparound services around the child and the young person. Each agency can still do our own little thing without perhaps getting together and looking at the whole person and their needs. (Community worker)

Participants with health, welfare and counselling backgrounds discussed how barriers and organisational constraints impacted their ability to operate professionally with clients. One former social worker, now a counsellor, made the following comment.

> I think social workers should have more access to professional supervision and professional development that focuses on their personal growth and feelings and attitudes to situations

they are involved with. Currently, they are not getting this, and I think this is reflected in the patchy practice we are seeing. really good programme at my workplace. (Nurse)

6.6.12 Summary

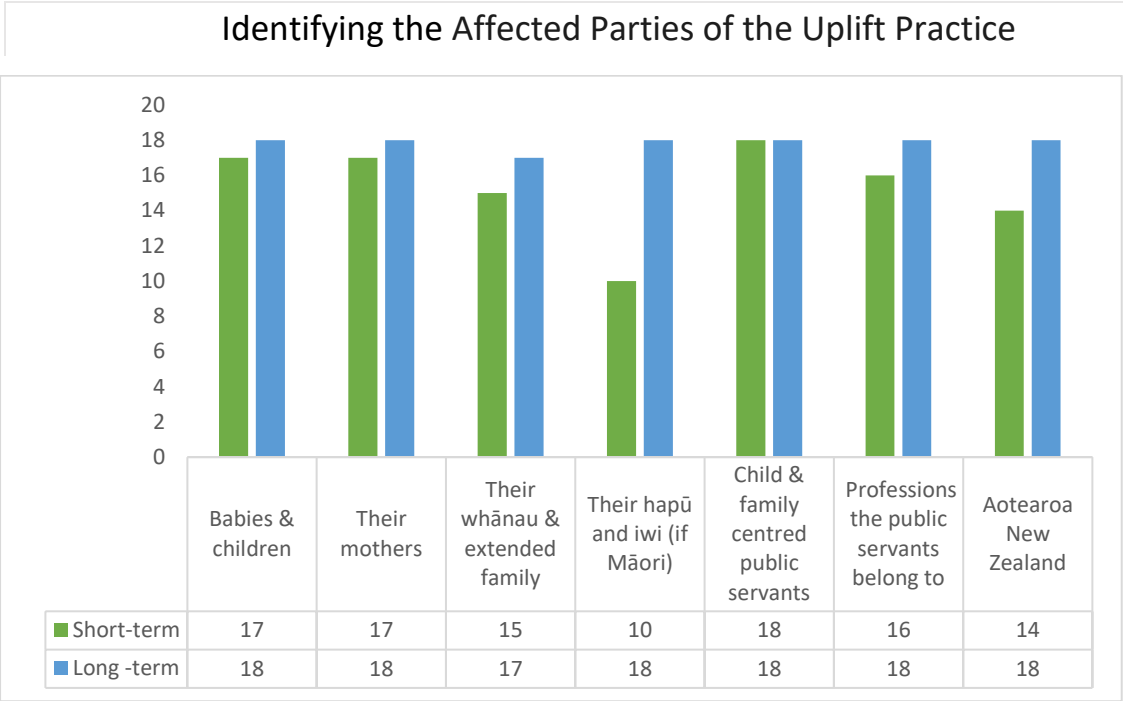
In this detailed chapter, participants have generously shared their experiences and knowledge to make meaningful insights for this research. There was a shared understanding among all participants of the urgent need to protect children from family abuse and violence**.** However, they also agreed that the State uplift intervention, policy and procedures do not effectively serve the best interests of the child or their family and are likely to result in more significant harm to the individual, their family, including intergenerational harm. From their perspectives, children and young people in State care, whether in non-kin fostering or State institutions, are likely to experience harm and abuse and do not have their educational, health, social and well-being needs met. Participants' perspectives suggested that as a public service policy and practice, State uplifts may not align with human rights frameworks or Te Tiriti. The application of human rights, including Te Tiriti considerations, is typically absent in the uplift process in their experience.

Three charts follow that summarise their key concerns about the State uplift practice.

Figure 6 illustrates the participants' belief that this 'person-centred' practice has both short and long-term effects on immediate kin, wider kinship groups, and public servants striving to work holistically with children and their families. Their comments indicate that the State uplift has a negative impact on children and families. The data also shows that public servants involved in or witnessing a State uplift can experience emotional distress, burnout, and a sense of powerlessness.

Figure 6

Participant Responses to Identifying the Affected Parties of the Uplift Practice

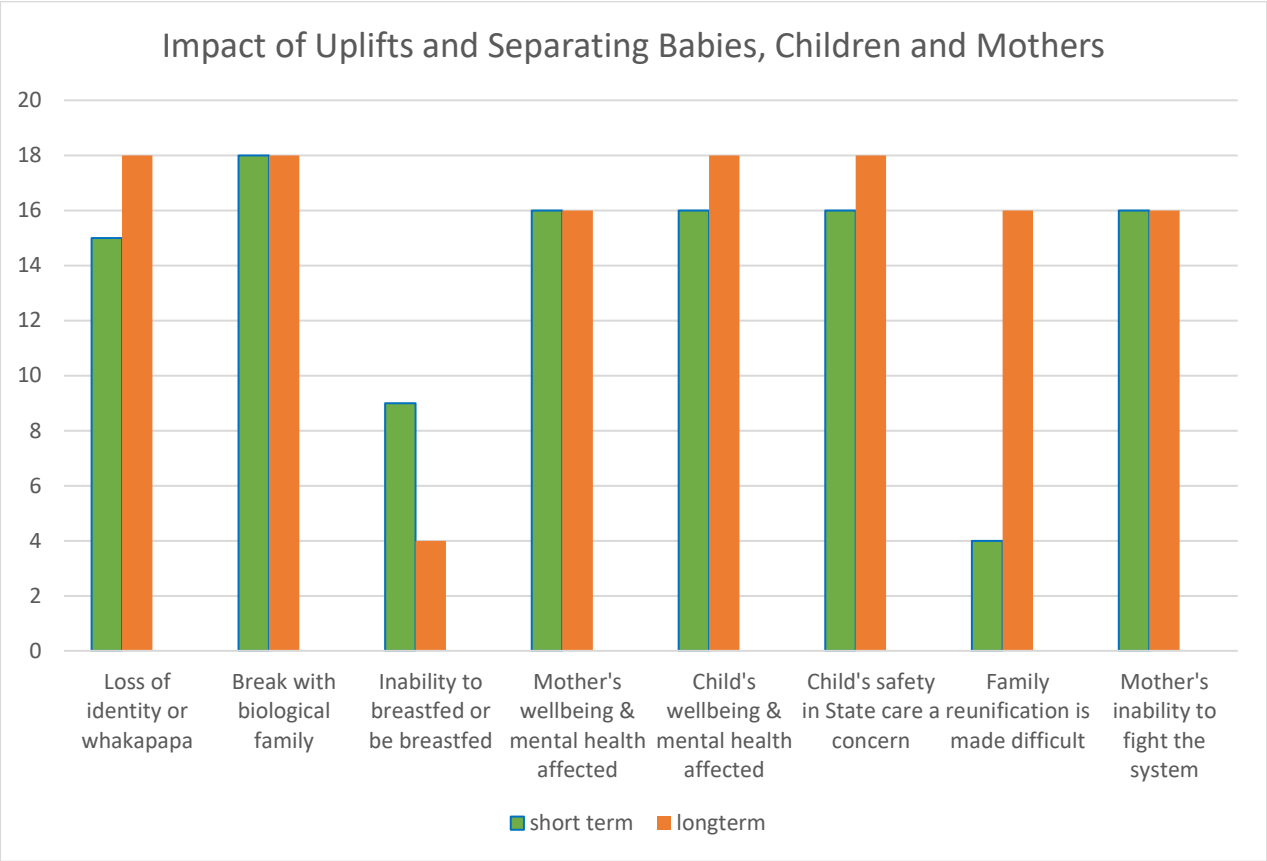


Note: Numbers on the y-axis indicate the number of interview participants (n=18).

Figure 7, on the next page, summarises participants' responses to the short- and long-term impact of uplifts that separate children and their mothers. Issues raised for the baby were their inability to be breastfed by their mother to the child's longer-term break with biological family and loss of identity and whakapapa, mental health and well-being issues related to being in State care where their safety and ability to thrive were identified as a concern. Issues of keeping the child safe from harm, abuse, and neglect, educated and healthy in State care were raised and identified as being the responsibility of Oranga Tamariki and its staff. Citing their experience and other research, all participants felt this agency failed in its legal duty to care for and protect the children and to ensure their well-being.

Figure 7

Participant Responses to the Impact of Uplifts and Separating Babies, Children and Mothers

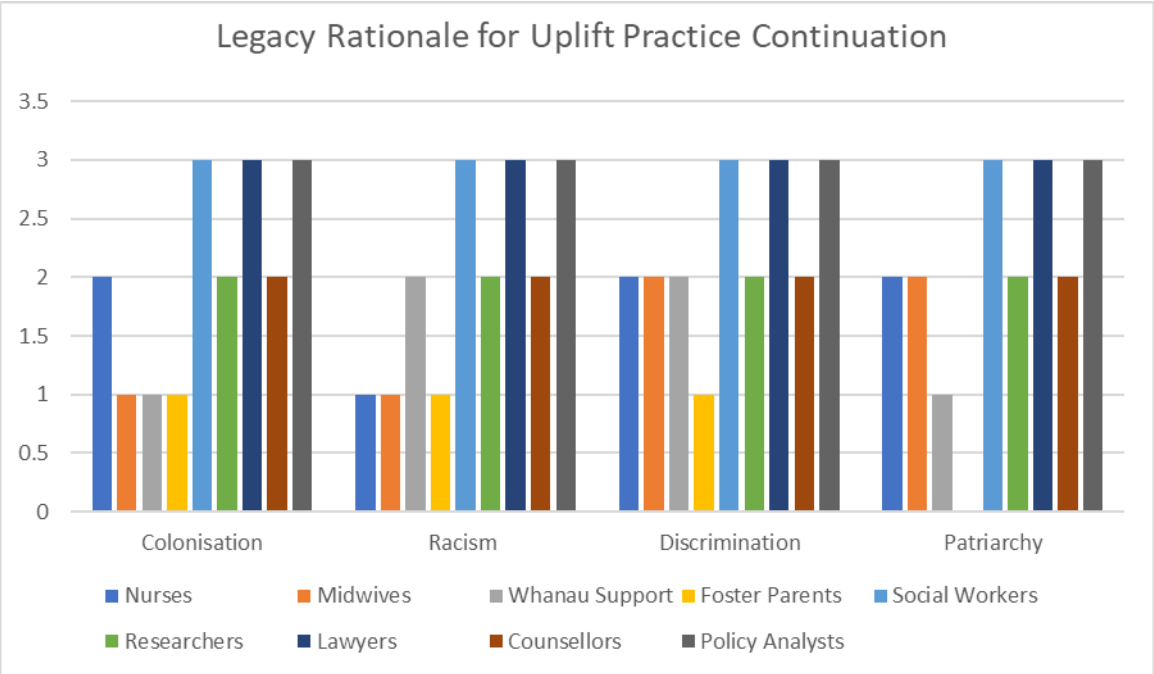


Note: Numbers on the y-axis indicate the number of interview participants (n=18).

Figure 8 highlights participants' perspectives on why the State uplift intervention into family life continues as a 'modern' public service practice. Participants raised ideas that legacy systemic legislation, hierarchical and siloed agencies policies and practices exist that harm Māori, women, children and young people. The intersectionality of individuals and communities suffering multiple forms of discrimination is present in the current public sector systems, creating barriers to change for public servants and others with the skills and experience to offer children and families the professional holistic public services and care needed.

Figure 8

Participant Responses Regarding the Uplift Practice Continuation



Note: Numbers on the y-axis indicate the number of interview participants in their current role and with a particular viewpoint (n=18).

Chapter 7: Discussion and Implications for Practice

The previous chapter gave the voices of the interview participants, as described by six themes and sub-themes. This chapter gives the intention of the Interpretive Description (ID) qualitative research and thematic analysis conducted to answer the research question. The thematic findings from participants' interviews are summarised and then discussed in the context of previously introduced literature informed by the conceptual framework of human rights and Te Tiriti frameworks and family ecosystems models. As ID has implications for practice, suggestions for improvements for how public servants engaged with public policy and practice approach the State uplift intervention. Finally, the limitations and opportunities arising from this research are discussed.

To recap, this study involved 18 participants aged 30- 80 years with experience in public health, welfare, and justice sectors, some with experience in public sector research policy and legal areas, including human rights, Te Tiriti 1840 and UNCRC 1989. Participants were a valid and crucial part of the whole research process, generously sharing their experiences, knowledge and meaning. Data was collected over four years and analysed from two sources: in-depth interviews; an extensive review of supplementary information from academic research (social sciences, medicine and law); government materials (reports, submissions, media releases, speeches and websites), and non-government information (books, reports, media, social media, blogs, newsletters), including five reports into the Hastings case and evidence and survivor testimonials, reports provided to the Royal Commission on Abuse in State and Faith-based Care (2018 - 2024) and the Commission's reports With the timing of the five Hastings case inquiry reports, including Oranga Tamariki's Hastings case practice report (OCC, 2020c; ONZ [Boshier] 2020; OT, 2019; WO, 2020; WT, 2021, they were not discussed with most participants, except for one participant who had seen the full practice report, while I only had access to the heavily redacted officially released report. Professional and personal support people guided and enabled me to carry out this research ethically, and with honesty and credibility.

7.1 Summary of findings

This research sought to address the following question:

> From the public servant's perspective as a duty bearer, how does the child-only uplift journey from hospital to stranger care in Aotearoa New Zealand, operate 'in the best interests of a child' as per the United Nations Convention on the Rights of the Child, 1989?

In responding to the context of this question, participants expressed concerns about certain marginalized groups, such as Māori individuals, those with a history of State care, and individuals facing mental health challenges, harbouring significant apprehension towards engaging with Oranga Tamariki, at any time. The participants offered anecdotes of mothers who had sought assistance during challenging times, only to have their children removed and placed in State care. The mothers' requests for practical support were misconstrued by their social workers as an indication of their inability to cope, leading to immediate 'without notice' child uplifts. With the subsequent child policy, once a parent had had one child removed, the State had the right to remove any subsequent children in a without notice urgent uplift on the basis of the first uplift. (In 2022, this policy was changed so it only related to a prior situation where a parent had killed a child in their care.)

These State uplifts resulted in the affected mothers, and their kin, feeling deprived of their rights in the face of a well-resourced State agency. Additionally, participants frequently referenced UNCRC which delineates the right of parents to receive assistance in raising their children (Art. 18). However, participants observed a recurring failure in ensuring that parents received such support and included adequate financial support. Families with resources, and one participant said this included social worker family members, were able to mobilise kin to prevent their child having any contact, or minimised contact, with Oranga Tamariki. For many people in the marginalised groups, this is not an option available to them.

Participants highlighted the lack of adequate support for these mothers to address their trauma, with restricted access to vital mental health services due to financial constraints and lengthy public health waiting lists. Engagement with Oranga Tamariki before, during and after an uplift is

considered problematic for kin, kin supporters and public sector professionals. The challenges originate in several areas: policies and procedures, people and practices, the hierarchical and siloed environment, and limited resource access. Participants noted that there is legacy legislation, such as the Adoption Act 1955 and legacy public service policies, originating from colonisation, which continue to discriminate against Māori, single mothers and their children, resulting in inequities.

Overall, these findings highlight the critical necessity for a more comprehensive, empathic and flexible "wraparound" Te Tiriti and human rights State, and public service, approach to supporting children, mothers and kin and addressing systemic barriers such as racism and inequalities, including economic inequality. More Māori public servants were needed at all levels of the State system hierarchy and those Māori public servants working were overburdened and overworked, compared to their non-Māori colleagues (Finding also found in Ihu Research, 2021) . Participants supported more devolvement of State care of Māori-to-Māori providers, such as Whānau Ora, but were insistent that the State's resources must follow; otherwise, providers are set up to fail. The following four key findings emerged from analysing participants' interviews.

1. **Finding 1**

   The State uplift practice is not in the best interests of the child, their kin and wider society because it is not a State public policy, practice or public service that incorporates Te Tiriti and human rights obligations.

2. **Finding 2**

   The State parent, with all its resources, is a highly experienced, dysfunctional, racist, and violent parent informed by legacy policies and practices and discriminatory attitudes and actions. Children are damaged and traumatised in State care.

3. **Finding 3**

   The State uplift is a legacy practice originating in harmful State and societal attitudes and practices towards Indigeneous peoples, single mothers, 'risky' teens and 'wayward' children

including forced adoption and sole parent discrimination. It is not a professional or evidence-based intervention and breaches modern codes of practice.

4. **Finding 4**

   Systemic barriers (resulting from Findings 1, 2 and 3) operate in the State uplift intervention, which is intended as a short-term intervention, but has quickly become a long-term solution. As a public service intervention, it only serves to traumatise children and their kin over generations and it also traumatic for public servants to witness and be involved. It is State sanctioned violence, which can only result in harm.

Together, these four interconnected findings indicate that the State uplift practice is not in the best interests of the child, nor in the best interests of their parents and wider kin, including multigeneration, as consideration to human rights and Te Tiriti is not valued in this State intervention. These findings also imply that the uplift practice is not an example of the best professional public service practice or intervention available, harmful to staff involved, and for public servants who wish to work in a strengths-based ways with kin, serious systemic barriers exist.

> When the State intervenes, it is with the overinflated assumption that "We can do a better job than the parents." (Social worker)

7.2 Linking the findings with previous literature

In this section, the research findings (Chapter 6) contributes to the existing literature in two main ways. First, existing knowledge about child and family human rights is applied to the State uplift practice as conducted in Aotearoa New Zealand. Secondly, although the State uplift is a public service intervention, most of the existing research and commentary misses out the perspectives of public servants who understand the creation and implementation of public policy, practice and services.

7.2.1 The State uplift is not in the best interests of the child, their family and wider society

Under Aotearoa New Zealand's human rights framework of international and domestic obligations, described in Chapter 4, the New Zealand government, as the signatory, is responsible for implementing and incorporating these agreements into legislation. These treaties and the rights they cover are intertwined. As a signatory of the UNCRC 1989, the government of Aotearoa New Zealand agreed to protect and promote children's rights to identity, nationality, family life, health, freedom from discrimination and protection from abuse.

No previous research in Aotearoa New Zealand has examined Oranga Tamariki's uplift practice as a public service or whether public servants as human rights duty bearers are working in the child's best interests as in Article 3 of UNCRC 1989 when they are involved in an uplift as part of their work. So, this section identifies the research that provides evidence of human rights and Te Tiriti breaches.

Participants, especially midwives, nurses and social workers, discussed the impaired development of babies separating from their mothers in an uplift. The rights to health and well-being are UNCRC rights (Articles 3, 7, 8, 9, 10, 11, 18, 19, 20, 23 and 25). Separating newborn babies from their mothers, in an uplift, has severe and long-lasting effects on the child's development, well-being, and sense of identity, ability to form attachments and may even damage the developing brain (Ainsworth, 1973, 1991; Bowley, 1969; Erikson, 1980, Harvard University, 2007; Plomin, 2018; Schechter & Willheim, 2009; Stamoulis & Nelson, 2017). This highlights the importance of placing the best interests of the child at the forefront of all actions by the State and other agencies involved in child welfare, as stipulated in Article 3 of UNCRC 1989.

Babies and children as rights bearers have a legitimate claim to hold State duty bearers accountable for working in their best interests and to promote equity and non-discrimination (UNICEF, 2017). However, due to their developmental age, this right is difficult to claim as babies and children depend solely on adults to exercise or claim some rights on their behalf (Te One, 2011). In the case of the State uplift, the interpretation of the child's best interests is at the interpretation

of the duty bearer, who is their social worker, or of the public servant's best interest and bias, professional ability, and empathy. It has been shown in the urgent without notice uplift situation that Oranga Tamariki and its social workers are not considering the needs or wishes of the child's immediate family or their wider kin which result in broken family connections and trauma, especially for whānau Māori and, hapū and iwi (OT, 2019; OCC, 2020a, b, c; WO, 2020; ONZ [Boshier] 2020; WT, 2021).

There are UN guidelines that support the State uplift of a child in limited settings, noting that the State "removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration" (UNCRC, 1989; UN, 2009, 64/142.2a). To protect a child in a violent or abusive situation, an immediate uplift may be needed. However, Aotearoa New Zealand is failing in this regard, with reports illustrating that Oranga Tamariki operates in crisis mode, often intervenes with only short-term solutions, and then slows down the placement process discussions with kin, which can then make the temporary care a long-term solution delaying or preventing family reunification (OT, 2019; OCC, 2020a, b, c; WO, 2020; ONZ [Boshier] 2020; WT, 2021). In 2022, Oranga Tamariki did not meet its obligations to find whānau, hapū, and iwi caregivers in the first instance (Ombudsman, 2022).

Ninety per cent of Māori enter State care through without notice uplifts. The 'surprise' and traumatic nature of the uplift means mothers or whānau have no time or ability to take part in the legal process of deciding the care and protection of the child and to see and critique any information provided before the child is removed. Hence their rights to natural justice are denied under section 27 of the Bill of Rights Act 1990 and Article 7 and 10 of UDHR 1948.

Research in Aotearoa New Zealand, argues that children's rights, which are connected with their right to identity) must be understood within the collective context of wider family and for Māori children in the collective context of whānau, hapū and iwi (Broughton, 1993; Durie, 2001; Harmsworth & Awatere, 2013; Child Poverty Action Group et al., 2018; Ludbrook, 2009; Kukutai & Cormack, 2020, MAC, 1986; McBeth, 2015; Mikaere, 2003; MoJ, 2002; Walker, 1997). This link for

Indigenous peoples is apparent in UNDRIP which the New Zealand government signed in 2010. After the development of UNCRC in 1989, and in response to Indigenous peoples and human rights agencies, the UN Committee on the Rights of the Child (CRC) recognised:

> "that the best interests of the child is conceived both as a collective and individual right, and that the application of this right to Indigenous children as a group requires consideration of how the right relates to collective cultural rights. Indigenous children have not always received the distinct consideration they deserve. (UNICEF, 2004, p. 1.).

In Aotearoa New Zealand, in the State uplift and State care practices, Māori children, young people and their kin lack "the distinct consideration they deserve." Evidence from participants and the Waitangi Tribunal (2021) shows that Oranga Tamariki uplift policy and practice breaches Te Tiriti principles of partnership, active protection, and options causing significant prejudice to whānau Māori and their hapū and iwi. The voices of tamariki Māori and their whānau (participation) were not heard in decisions about their care by the State between 1950 and 1999 (Savage et al., 2021), which is still an issue for children in State care and their whānau in 2022 (ICM, 2022). In 2022, the Independent Children's Monitor research (ICM, 2022) of 352 tamariki Māori in Oranga Tamariki's care found 38% had not had an assessment of their identity, cultural connection or belonging needs; and 61% had not had their wider cultural connections identified, including making contact arrangements with members of their hapū and iwi. These connections are essential, not only for family reunification but for a child knowing their birth family identity and for Māori, whakapapa.

This small selection of research, as opposed to literature in the full thesis, and participants' findings collectively answer the research question. The State uplift practice is, and has never been, in the best interests of the child or their kin and Te Tiriti and human rights consideration is absent in this major State intervention into family life. In Aotearoa New Zealand best, human rights implementation in public policy and practice is at patchy or non-existent, open to individual interpretation, or a non-consideration (CRC, 2023; OCC, 2020; UNICEF NZ, 2013, 2017).

7.2.2 The State parent is dysfunctional and violent and discriminates

Following an uplift, the Oranga Tamariki Chief Executive acts in *loco parentis*, the legal term for becoming the uplifted child's legal parent. Research participants and previous literature confirm that children in State care do not receive a stable home, adequate care, protection and safety (Ashton, 2014; Atwool, 2012).

Participants also found that their education, health, social and well-being needs were not being met in State care, which is supported by other research (ICM, 2022, 2023; OCC, 2015).

In 2015, the Office of the Children's Commissioner's *State of Care* report, stated that it "could not say conclusively whether children are better off as a result of state intervention, but the limited data we do have about health, education, and justice outcomes is concerning" (OCC, 2015, p. 5). This collective evidence identifies that the State parent, Oranga Tamariki, is a dysfunctional parent, as it is not able to provide the child's basic needs even though it has more resources at its disposal to care for the child than the child's parents.

Participants talked about children in State care not having stable living conditions despite being taken into care because their parents were judged as not providing a stable environment. Oranga Tamariki's research in 2018 and 2021 showed that 70% of the 5,708 children in care had two or more placements, and 575 children had five or more placements (OT, 2018, 2021). Participants discussed how multiple State care placements affect a child's well-being, safety, and ability to belong and form attachments and can cause academic and social difficulties and other studies provide evidence of this impact on a child (AAC, 2015; Pardek, 1984; Proch & Taber, 1985; Robinson, 2020; Ruban et al., 2007). One participant, a foster parent talked about the child in their care not being able to join a sports team, even though they would pay the fees and brought the football boots, because Oranga Tamariki didn't allow it in case he was moved. Participants thought that children and young people in State care don't belong, unlike children living with kin with a large factor being multiple placements and living with non-kin (Chambers et al., 2018; Howard, et al., 2023 These short and long-term negative impacts are concerning.

Participants talked about children in State care experiencing violence and abuse from their Oranga Tamariki, and Oranga Tamariki delegated non-kin caregivers and duty-bearers. Incidents of State care violence and abuse is both historic and still occurring as evidenced by the Royal Commission into Abuse in State and Faith-based Care (RCASC) and the Hastings uplift reports (OT, 2019; OCC, 2020a, b, c; RCASC, 2024 WO, 2020; ONZ [Boshier] 2020; WT, 2021).

From 2018 to 2023, RCASC (2018-2023) talked to survivors, researchers, and public sector agencies to identify the abuse in care between 1950 and 1999 and, where appropriate, from 1999 until the present day. The total number of children abused in State care will never be known due to insufficient historical data and non-reporting (Cook, 2020; MartinJenkins, 2020; RCAC, 2020; TDB Advisory, 2020). However, between 1950 and 1999, it is estimated that from 17% to 39% of the 655,000 children in State and faith-based care were abused (MartinJenkins, 2020; RCAC, 2020; TDB Advisory, 2020). There is considerable evidence that during the same period, many children in State care, disproportionately Māori children, were emotionally, physically and sexually abused by their carers (MartinJenkins, 2020; OT, 2019, 2020; RCAC, 2018-2023, 2024; Rouland et al., 2019; Savage et al., 2021; Waitangi Tribunal, 2021). In New Zealand, reported abuse is commonly lower than actual cases (NZCVS, 2020).

Participants referred to abuse and violence continuing for children and young people in State care. The evidence from other literature is robust. Between 2017 and 2021, 30 children and young people died in State care in New Zealand (OT, 2021). There is also evidence of children experiencing neglect and abuse (Erueti, 2018; Stanley, 2016). In one year (2015-2016), 85 children, including babies, experienced harm from State foster carers (OT, 2018). Māori children are more likely than non-Māori to be harmed in State care, and more children experienced sexual harm in non-kin placements than when placed with kin (OT, 2020).

Participants talked about clients and people they knew who had grown up in State care having complex and long-term difficulties. Longitudinal data for children born in 1991 who had been in State care confirms this (Crichton et al., 2015). By the time, these people were 21, 90% were

reliant on a government benefit, with over 25% being on a Sole Parent benefit (Crichton et al., 2015, p. 4). Most of these young people (80%) did not have NCEA Level 2. By the age of 18, 20% of the cohort had had a custodial sentence, and almost 40% had a community-based sentence (Crichton et al., 2015, p. 5). These findings are supported by the RCASC's report, *Care to Custody: Incarceration Rates* (2022), which analysed the New Zealand interagency records of more than 30,000 people between 1950 and 1999. The research shows that being in State care leads to state prison disproportionately to the general population, with up to one in five, and in specific periods as many as one in three, of those children who had been in State care later serving a criminal custodial sentence (RCAC, 2022, p. 4). These research findings are well supported by other research and provides evidence for the concept of a 'pipeline' from State care to State prison (Cook, 2020; Mcintosh, 2019, 2011; RCAC, 2024; Stanley, 2016).

As participants, and previous research cited, have identified, adults who grew up in State care have experienced far more significant problems with health, mental health, employment, education, homelessness, and criminal justice issues than the general population (MSD, 2015; Seba et al., 2015).

In New Zealand research on the parents of 171 children notified to child welfare, State care, 49% of the mothers and 41% of the fathers had been involved with child welfare as children or young people (Connolly et al., 2007). Many of the parents of children uplifted by the State in recent years had been abused in State care as children (Crichton et al., 2015; RCASC, 2024).

Between 2021 and 2023, evidence shows that children and young people in Oranga Tamariki care did not have their basic needs met, there was no reduction in findings of abuse and neglect, and the agency continued not to achieve the minimum standards of care (Controller & Auditor-General, 2024; ICM, 2022, 2023, 2024).

Collectively, the participants research, the research cited in this section and the rest of the thesis indicates that the State parent has tremendous difficulty keeping children and young people in its care are safe from harm and have their basic needs met. human rights met. Oranga Tamariki,

as a State parent, has access to State resources which are far greater than a child's extended family and larger community. This research's finding that the State parent is dysfunctional, violent and discriminatory is I believed, not an exaggeration from the evidence provided in the collective literature in this thesis.

7.2.3 Systemic barriers operate in the State uplift intervention

State uplifts from kin and State care in Aotearoa New Zealand are highly political and have a legacy of colonisation, no consideration of human rights and Te Tiriti and non-kin violence, as evidenced in the previous two sections. Participants discussed how Māori cared for children in pre-colonisation times and their thoughts on the origins of the uplift practice and children in State care. Traditional Māori society avoided these approaches with their whānau and hapū collective responsibility for child-raising and a non-tolerance of violence towards women and children which missionary Samuel Marsden wrote about in 1814 (Belich, 1996; Jenkins, 1992; Jordan, 2005; Mikaere, 2017; Pere, 1988; Pihama et. al., 2019; Salmond, 1991).

New Zealand government, public service and society was founded on British colonial values and norms, Christianity and the Westminster legislation influence, regarding violence towards women and children (Cozens, 2015). British mass colonisation, following the signing of Te Tiriti in 1840 resulted in Māori, as Indigenous People, being treated as lower beings (othering) within the well-established British colonial hierarchy with Māori women's status as leaders diminished (Binney, 1995; Human Rights Commission, 2022; Johnston & Pihama, 1994; Mikaere, 1994; Salmond, 1991; Smith, 1992; Wanhella, 2011). The Human Rights Commission's report *Maranga Mai* (2022) linked colonisation with racism and white supremacy. These attitudes were still apparent in New Zealand society and politics in 2023. The Disinformation Project's research over the period June to September 2023, identified that "Aotearoa New Zealand is experiencing rising anti-Māori racism and growth in white supremacist ideologies" (DP, 2023, p. 4). This study showed that these 'othering' and deficit-thinking attitudes are reflected in political and public rhetoric, particularly on social media, explored further in this section.

Research participants felt that the reason this harmful practice of separating mothers and their children continued over the years was initially that the society and the predominantly male politicians at the time demanded that unmarried mothers be punished for their 'sin' of being female, being young, and for having sex outside marriage, hence with forced adoptions and uplifts. This was without the reality of violence towards women and children Most interview participants linked Aotearoa New Zealand's violent colonial past with intergenerational patterns of family or intimate partner violence (IPV) and child abuse and a "high tolerance of violence" towards women and children in the family home, evidenced in research (Fanslow & Kelly, 2016; Mikaere, 1994; Ministry for Women, 2012; 2021).

Participants gave examples of child clients who had gone into care and adult clients who had either had a child removed or grown up in State care. Their examples have similarities to other research on the reasons why children enter State care, particularly in relation to family deprivation and ethnicity, for example Māori children, from economically poor families, are disproportionately represented in State care. Families experiencing multiple intersecting influences of poverty, income and racism, have a much greater chances of having contact with the child protection system (Bullinger et al., 2021; Cancian et al., 2013; Conrad-Hiebner and Paschall, 2017; Detlaff and Rivaux, 2011; Font & Maguire-Jack, 2021; Mackenzie et al., 2011; Morton et al., 2022; Pelton, 2015; Raissian & Bullinger, 2016; Slack et al. 2017). In Aotearoa New Zealand, children from the most deprived neighbourhoods have nine times the chance of entering care, compared to the least deprived (Keddell et al., 2019). Child neglect and abuse can be related to poverty, family violence, drug and alcohol abuse, mental health disorders, single or teenage parenthood, inadequate housing, poor access to childcare, a parent with correctional or State care involvement, lack of support, and social isolation (Bromfield et al., 2010; Emery & Laumann-Billings, 1998; Pekarsky, 2020).

Participants discussed that as Aotearoa New Zealand has become more liberal about the diversity of family structures and composition, discrimination, often based on racism, is still embedded in central government, State welfare and health structures, workplaces, and some public

servants attitudes and actions, This systemic racism was illustrated by Oranga Tamariki's social work policies and practices in the Hastings case which focused the uplift practice on Māori babies (OT, 2019; OCC, 2020a, b, c; WO, 2020; ONZ, 2020; WT, 2021). The Waitangi Tribunal's report (2021) into uplifts of Māori babies and children found that State employees occasionally acted in harmful and inhumane ways, due to having a court order to implement (WT, 2021).

Participants believed that biases and discrimination present in the child welfare system, evidenced in the literature (Bronfenbrenner, 1979; Dettlaff et al., 2020; Durie, 1985). These biases often lead to unequal treatment of mothers compared to the child's father, particularly focusing on perceived parenting deficits (Gilbert et al., 2011; Kedgley, 1996; Lee, 2016; Stanley, 2016; Williams, 2012. There is documented harsher treatment of Māori babies and mothers compared to their Pākehā counterparts by public servants (Kiddell, 2012). The Ministerial report Pūao-te-Āta-tū (1986) and the Royal Commission Abuse in State-based care reports (Ihu Research, 2021; RCASC, 2020a, 2020b, 2020c, 2024) are key evidence of on-going and persistent structural racism, originating in colonisation and impacting on Māori children and their families.

Although participants believed that there were some culturally competent social workers, Oranga Tamariki was a Pākehā-dominant model, with much of its policy and practice informed by British social work, also evidenced in Keddell's research (2017). Evidence of this was also provided by claimants in the Waitangi Tribunal inquiry into Māori Children in State care saying, "Pākehā-centric policies and practices" are manifested "in the care and protection system for a long time, most notably in Oranga Tamariki's adoption of a highly individualised, child-focused policy and 'child protection model' of practice." (WT, 2021, pp. 58-59).

This public official bias is especially evident in cases of family violence, where the mother's actions are often scrutinized more than those of the male perpetrator (Lapierre, 2008). In contrast, New Zealand research involving 1,464 women shows that women, and especially mothers, who face violence need support from public and community services, (Mellar et al., 2023) not further trauma resulting from removing their child. Māori babies and mothers receive poorer treatment from public

servants compared to their Pākehā counterparts (Kiddell, 2012). This compelling evidence underscores the necessity for prompt and meaningful changes within the child welfare system to combat discrimination and racism. It emphasizes the pivotal role of empathy, relational care, and cultural competence in working with clients and their families. Participants talked about low numbers of Māori public servants and statistics for this are in Table 6 of this research (p. 170) and how they felt racism enabled low levels of cultural competency among other staff and few Māori public servants in senior leadership roles evidenced in other research (Came et al., 2020; Came et al., 2023; McCreanor et al., 2019).

Aotearoa New Zealand has a small population of five million people and a government report in 2012 stated that most children who are seriously abused are “already involved with government agencies” (MSD, 2012a, p. 7). Several participants commented that with more notifications to Oranga Tamariki and Police continue, so more families, particularly Māori, are under State scrutiny. In the 2022/2023 year, 82 of every 1000 tamariki Māori were reported to Oranga Tamariki, compared to 24 non-Māori children (OT, 2023d). Longitudinal data since the 1970s, shows that over 50% of the children in State care in New Zealand were Māori whereas the total Māori population in 2021 is just over 17% (Ihi Research, 2021: RCASC, 2024; Statistics NZ, 2021).

With 94% of all section 78 orders for 2017/18 and 2018/19 being 'without notice' applications, this is a major example of the power of legislation being used to discriminate against families (Ombudsman, 2020). However, between 2017 and 2021, over 90% of uplifts of Māori were executed ‘without notice’ further highlighting the State discrimination of Māori (WT, 2021, p. 106).

In 2021, the Waitangi Tribunal identified that these high numbers of uplifts of Māori children and Māori in State care were a result of Oranga Tamariki applying a Western model of notify-investigate combined with a child rescue approach resulted in an ‘often inhumane ’oversurveillance of Māori families, and other communities living with inequality and poverty (WT, 2021).

Participants discussed how Oranga Tamariki in its management and child protection practices, and many other public sector agencies, are risk-adverse. Keddell (2022) described the

implications of this deficit approach as agencies, and their staff, “tend to become risk focused and this provides fertile ground for the reproduction of biases.” (p. 2).

As a State intervention and as a social work practice removing a child from kin should be only done as a last resort and should only be temporary (Carr, 2016; CYF, 2010; Davis, 2021; OTMAB, 2021; UNCRC, 1989; UN, 2009, 64/142.2a). However, this research shows this is not the case with Oranga Tamariki.

The five Hastings reports, including Oranga Tamariki’s own Hastings report, illustrate that agency staff can use unproven allegations and historical or incorrect information against the parent and whānau to remove a child or children from kin (OT, 2019; OCC, 2020c; OT, 2019; WO, 2020; ONZ, 2020; WT, 2021). These may not result in any Court charges, yet it can take years for the child to be reunited with their family if an uplift has occurred (OCC, 2020; Ombudsman, 2020). The tragic irony is, as three interview participants noted, that being abused in State care, leading to a formal complaint or a caregiver prosecution, seems to be the easiest way for the State to return a child or young person to their whānau.

The five Hastings case reports illustrate that there was little Oranga Tamariki social work or in-house lawyer preparation, nor factual information provided as evidence for the uplift, and no suggestions of alternative interventions (OT, 2019; OCC, 2020c; OT, 2019; WO, 2020; ONZ, 2020; WT, 2021). An independent review (OCC, 2020) found that 53% of social work assessments of Māori babies at 0-3 months resulted in unsubstantiated findings. Rates of unsubstantiated findings for non-Māori are 8%-9% per cent higher than for Māori (OCC, 2020). This operational practice is highly damaging to families in Aotearoa New Zealand as children are removed from their parents, based on inaccurate information or allegations which are later found to be unsubstantiated. In 2020, the Chief Ombudsman's found that Oranga Tamariki regularly took newborn Māori babies without whānau consultation, using these emergency 'without notice' court orders as a routine practice and adequate evidence was not always provided (ONZ [Boshier] 2020). Oranga Tamariki responded by

saying high caseloads and limited numbers of Māori specialist staff resulted in babies not being prioritised until birth was imminent.

There is also legacy problematic legislation that Oranga Tamariki staff have to work with, such as the Adoption Act 1955 with its support of 'false' or 'second' birth certificates for adopted children and 'punitive' legislation, such as section 78 without notice uplifts (*OTA 1989*, sec. 78) and interventions continue to be introduced, depending on the government's political philosophies.

The number of children in State care in Aotearoa New Zealand can increase or decrease, related to political or societal responses (compassionate or punitive) to State care events, such as the Hastings case or a child harmed in care or with their kin (Keddell, 2017, 2019). Oranga Tamariki data reinforces these patterns related to uplift events publicised by the media and legislation change (OT, 2021). For example, in 2021, following the Hastings case and the findings of the inquiry reports, the (then) government repealed the 'subsequent children' provisions in the OTA 1989 where if a parent had one child removed by Oranga Tamariki any subsequent babies would automatically be removed, demonstrating its commitment to ending this discrimination.

In 2025, the repeal of section 7AA of the Oranga Tamariki Act 1989, (NZ Parliament, 2025) is an excellent example of the political thinking put into action by politicians and public servants, which either reduces or increases the uplift of Māori children in State care and either supports or opposes Te Tiriti as necessary to their care. Until section 7AA implementation in 2019, Oranga Tamariki placed most children with non-kin foster parents. Section 7AA required Oranga Tamariki's chief executive to recognise Te Tiriti by reducing the number of Māori children in State care and to support Māori children staying with wider kin, hapū, and iwi (OTA, 2019, sec. 7AA).

Oranga Tamariki statistics showed that "since section 7AA and the more significant partnership with iwi, there was a reduction in Māori children, especially babies, coming into care, from 70% of all children in 2018 to 62% in 2023, with a 59% reduction in 2020 following the Hastings case and the legislation introduction" (OT, 2023, p. 7).

In May 2024, the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill had its first reading in Parliament, with a report back to Parliament in November 2024 (NZ Parliament, 2024). In the same month, the Waitangi Tribunal's urgent inquiry into proposed 7AA changes found that " the Cabinet decision to approve the repeal of section 7AA in the absence of good faith dialogue and engagement with its iwi and Māori partners is a clear breach of the article 2 [Waitangi Tribunal] guarantee to Māori of tino rangatiratanga over kainga and the principle of partnership" (WT, WAI 3350*,* p. 30). Hence, this bill, when passed in April 2025, breaches the Crown's responsibilities to Te Tiriti o Waitangi and denies Māori children the right to be placed with kin.

Themes in the Oranga Tamariki Hastings case internal practice review and the five external reports on the Hastings case identified similar themes to those described by my interview participants (OT, 2019; OCC, 2020a, b, c; WO, 2020; ONZ [Boshier] 2020; WT, 2021). Briefly, key issues are that social workers and other public sector professionals are upholding legacy public sector systems and practices that continue to target and harm Māori and enable racism, discrimination, and a lack of trust (OCC, 2020a, b, c; WO, 2020; ONZ [Boshier] 2020; WT, 2021). Although there may be some examples of good practice, the overall impression of Oranga Tamariki's management and frontline social workers, from these five reports, is that staff do not have the skills to engage effectively with Māori whānau, hapū and iwi to give the support whānau need. When Oranga Tamariki intervenes with a State uplift, staff cannot also use their legislative and social work processes and skills effectively to protect the child and their family from further harm and trauma. Like participants in the present research, the Hastings inquiry reports identified a reluctance of Oranga Tamariki staff to empower and adequately fund others, such as NGOs, particularly Māori agencies, to work effectively with children and their families, whānau, hapū and iwi to prevent uplifts from occurring. The five Hastings inquiry reports also recommended Māori-led solutions, with adequate government funding, to prevent uplifts that result in Māori babies, children and young people entering State care. (OCC, 2020a, b, c; WO, 2020; ONZ [Boshier] 2020; WT, 2021).

7.3 Implications for practice – actions that matter

The implications of this interpretive description research extend beyond the academic realm. Going beyond the conceptual implications, these research findings offer practical insights for public servants, the public services and the Parliamentary governance, suggesting possible areas of policy and practice improvement. The suggested actions that followed are categorised into macro, meso and micro as for real change to occur, work needs to be done at all levels of our society.

Macro level solutions - Political changes at central government level that could change societal legacy thinking, policies and make a difference to children and their kin involved in State uplift and State care and to our society, in the short and long-term.

a. *Apologise and make financial reparation and wraparound support* (if wanted or needed) for those who have been in State care, or their family if they have died. This action includes seeking cross-party support long-term to apply all the Royal Commission of Inquiry into State and Faith-based Care recommendations.

b. *Recognise and redress the legislative and policy harm caused to Māori whānau, hapū and iwi.* Cross-party long-term support.

c. *Implement Te Tiriti and UN human rights agreements into legislation* and ensure that these agreements are reflected in any linking legislation. Cross-party long-term support.

d. *Fund key positions/agencies who can monitor the Implementation of Te Tiriti and UN human rights agreements in legislation, public sector policies and practices.*

e. *Work to phase Oranga Tamariki out* and devolve resources to the community level, as child protection model not working or appropriate for our communities.

f. *Reduce the number of children in State care* by devolving resources and care, initially for Māori children, to Māori providers such as Whānau Ora. Cross-party long-term support, including increased Budget and legislation.

g. *Reduce the without notice uplifts greatly* by making this policy and practice only to be used in the most serious cases, with strong evidence. Work cross-party to eliminate this practice to improve society.

h. *Ensure, through legislation, that children in non-kin State care* are only in this position for a temporary period until kin or appropriate care is found.

i. *Reject any political rhetoric or legislative activity which is based on reducing Te Tiriti or human rights in legislation.* (In 2024 and 2025, there are two attempts with the Treaty Principles Bill (defeated in 2025 at 2nd Reading after the largest national protest) and the less understood Regulatory Standards Bill which was at Select Committee consultation stage in June 2025. [In an urgent Waitangi Tribunal hearing, judges said the Crown has breached Te Tiriti partnership with its preparation which was "without consulting meaningfully with Māori" and if passed in this State would breach Te Tiriti and Māori rights (WT, 2025, p. 27.)]

j. Reject ACT's section 7AA Bill by a Parliamentary majority support. [This action did not occur as the dominant coalition government which includes National, New Zealand First and the Bill's lead ACT, passed the Bill on 3 April 2025. The Bill was created without consultation with Māori as Crown partner, its contents were discriminatory against Māori and its intent divisive. Section 7AA was introduced in 2019, following the Hastings case, to address systemic biases and to ensure that Māori have a say in the care of their children – reasons important for its retention (Law Association, 2024). Supporters of the Bill in Select Committee submissions (10% of total submissions) argued that being 'colourblind' is non-racist and sought equality of process, not equity or equality of outcomes, which makes the real improvement to inequities in society. In 2026, a new coalition government could possibly reintroduce 7AA in legislation.

k. *Stop Oranga Tamariki-led 'boot camps'* by a Parliamentary majority vote as they have proven not to work in the past and any development of this idea has not involved Māori, though most young people selected are Māori.

l. *Stop legislation progressing that punishes parents for their children's no-attendance at schools* and fund research and solutions so students want to attend school.

m. Re-examine why the Adoption Act 1955 still exists as legislation, as evidence shows that this Act breaches Te Tiriti, human rights obligations, creates 'false' birth certificates and has caused at least three generations of kin trauma and separation harm by closed and secret adoptions, when today other forms of kin care exist. Address the legislation and practices consequences for adopted people and kin.

n. *Reduce economic poverty*, especially for low-income families and communities -cross party long-term support, including increased Budget for evidence-based, strength-based interventions.

o. *Build more State housing* for individuals and families that may need long-term accommodation.

p. *Recognise and reduce male violence towards women, children and others and all partner and family violence*, cross party support and funding for community-based agencies that are working in preventative education and strengths-based prevention ways.

q. *Recognise and reduce hate speech and violence leading from hate speech in legislation.* Parliamentary majority voting to increase the funding to agencies who monitor and take action, where necessary. Hate speech is contrary to human rights and Te Tiriti implementation. It can also prevent people from participating in public life.

r. *Be more accountable and use Parliamentary sanctions for individual politicians* who use racist and discriminatory rhetoric in their Parliamentary work. A Parliamentarian's code of conduct may be useful in this context.

s. *Select candidates for Ministerial advisory groups or Crown agency boards, overseas Ministerial travel groups, based on merit and relevant experience* who can make a difference, rather than purely political appointments.

t. *Have stricter boundaries/enforcements of Ministerial use of State agencies* for political work and incurring costs, including public servant time and resources.

u. *Introduce a code of conduct for lobbyists and introduce and publish a Parliamentary Transparency Register* which lists the lobbyists with access to Parliament and meeting with Ministers and members of Parliament to improve integrity and transparency in Parliamentary processes.

Meso level solutions at the public service and community level that could make a difference to public service legacy thinking, policies and make a difference to children and their kin involved in State uplift and State care and to our society, in the short and long-term.

a. *Incorporate UN human rights agreements and Te Tiriti into all proposed legislation, current public service policies and practices* and a higher degree of monitoring of this to ensure it happens.

b. *Work to phase Oranga Tamariki out* and devolve resources to the community level, as child protection model not working or appropriate for our communities.

c. *Ensure, through social work and court orders, that children in non-kin State care* are only in this position for a temporary period until kin or appropriate care is found.

d. *Fund and support kin who take on kin care* so they can do this as a full-time job, if they want to, without suffering financial hardship, crowded living or extra stress.

e. *Ensure that each child and young person in State care has a strong advocate*/an experienced trauma-informed social worker, so they are getting their full health and well-being and educational needs meet and are well prepared for leaving State care.

f. *Oranga Tamarik/NGOi kin connectors* – develop and fund these roles with the intention that children and young people in State care can be reunited with kin. These roles could also be used to support kin with kin care and support parents who have grownup in State care to parent, if they are need help.

g. *Review and implement relevant part of the Pūao-te-Āta-tū (1986) report.*

h. *Partner with providers using kaupapa Māori intervention models* such as Whānau Ora to devolve services and resources over time, if appropriate for the provider.

i. *Be wary of importing 'evidence-based' models from other countries – these are often not culturally appropriate or relevant for Māori and New Zealanders.*

j. *Ensure Te Tiriti, te reo and human rights and cultural competence training* is part of all public servants' mandatory professional development training.

k. *Relational approach required of community facing public servants* so can work in a strength-based way alongside whānau, hapū and iwi.

l. *Ensure only the most experienced, culturally competent and trauma-informed* public servants deal with families and whānau under stress or in potential or actual child abuse or family violence situations.

m. **'***Free, Frank, Fearless and Evidenced-based' public sector chief executives* and senior leaders – high in integrity, and able to stand up to political leaders using evidence.

n. *Public sector leadership to identify and address systemic racism* and inequalities in policies, processes, outcomes, and report back annually on elimination strategies.

o. *Introduce a career pathway for public sector leaders in training* so that when someone is appointed as a chief executive, they are confident in te reo Māori and

have experience of successful Crown-Māori Te Tiriti partnerships and human rights in policy and practice.

p. *Increase the Māori public service workforce at all levels* – all agencies.

q. *Increase the Pacific and diverse communities representation* in the public service workforce.

r. *Reduce hierarchy and silos* within a public sector agency and across-agencies to encourage collaboration and sharing of resources to better communities.

s. *Increase the funding for the Public Defenders offices nationally* so they, or their team of advocates, can represent kin who have children and young people uplifted or in State care, including in all dealings with Oranga Tamariki and other government agencies, as kin are likely to experience discrimination from government agencies.

t. *Fund legal aid for parents and kin with child in State care* so they appeal uplift orders, seek reunifications and help negotiate with Oranga Tamariki.

u. *Increase the funding to Community Law Centres so that free and adequate legal advice can be given to those in need* – Ministry of Justice

v. Increase the funding to Community Advice Bureaus, and other NGOs, so that they can help people get access to their

w. Respond immediately to protection order breeches and treat gaslighting and online abuse seriously – Police and information security agencies.

x. *Recognise and address public service bullying and discrimination* - to staff, to clients and communities.

y. *Recognise and address school bullying and discrimination, including the use of physical restraint, so that schools are safe supportive places for students and staff*.

z. *Share public service expertise, if needed, to upskill community providers* so they can be empowered to do more for their community. Secondments and volunteer work.

aa. *Collect, analyse and store people's data carefully* so public services and NGOs can improve the life of a person and their family or community.

bb. *Provide Ministers and parliamentarians the full information* about whether proposed legislation or Ministerial activity enhances Te Tiriti or human rights obligations or not, and the full costs of all proposed legislation, including the accounting and economic costs, the costs of making no or incremental change, the social costs/impacts and whether this legislation leads to a progressive and equitable society.

cc. *Enable/enforce government agencies not to support Ministerial work that is purely political in nature,* e.g. Ministerial presence at lobby group conferences etc.

dd. *Present all government information in plain and accessible language.*

ee. *Present all government information in te reo and the language of the communities.*

ff. *Make agency and Court processes easier and timelier for parents and family wishing to appeal a Court order for an uplift or the release of a child in State care.*

gg. *Easily accessible and funded strength-based health initiatives* to support people needing help with drug, alcohol and addiction, violence and mental health issues.

hh. *Fund the Waitangi* Tribunal to have shorter, illustrated versions of their cases so everyone can access and understand the histories.

ii. *Fund marae, iwi, museums, art galleries and community centres so they can tell and share their difficult histories and achievement stories in creative ways.*

Micro level: these are suggestions for change based on the child in the context of their family or whānau, hapū to reduce State uplifts and children in State care.

a. *For adults who have been in State care* – a personal Government apology and apply the RCASC recommendations so people can have their mana and well-being restored.

b. *For child and young people in care* – human rights and Te Tiriti rights recognised with culturally appropriate care, being connected to or live with kin and not being moved around so can join in school or community activities, to have health checks and educational support to succeed.

c. *For young people leaving State care* – strengths-based support, mentoring and financial support for as long as they need it.

d. *For parents and families fighting an uplift or seeking a reunion* - free legal aid and support to negotiate the legal processes with Oranga Tamariki staff and processes.

e. *For mothers of new babies* – Accessible and funded pregnancy and postpartum support and respite care, if needed.

f. *For mothers, fathers and whānau who are struggling*– strength-based culturally appropriate wraparound support and programmes in their homes and community.

g. *For mothers at risk* – strength-based holistic models, similar to the Department of Corrections wraparound Mother and Baby Unit model for incarcerated mothers, but without prison guards, for mothers at home or based in a community centre.

h. *For fathers at risk* – strength-based culturally appropriate parenting models in a community setting that encourage responsibility and full participation in their children's upbringing or delivered in prison for incarcerated fathers.

i. *For kin carers and kin-like carers* – financial help, professional training and respite care so they can do the best job for the child or children in their care.

j. *For families struggling financially* – financial help to improve their situation.

k. *For young people* – full information about Te Tiriti and human rights, consent, relationship harm and abuse, identity and mental health issues, alcohol and drug abuse, free contraceptives and free access to health services, including counselling and dental care.

l. *For all women* – free contraceptives and period products.

m. *For everyone* -culturally competent public servants giving strengths-based service.

n. *For everyone* – knowledge of infant/child health and safety risks through strengths-based education.

o. *For everyone* – easy access to free and appropriate mental health services

p. *For everyone* – strengths-based education about family and partner violence.

7.4 Limitations of the study and opportunities for further research

7.4.1 Limitations of the research

While this research has valuable and practical insights, it is important to acknowledge the limitations that follow.

Interview sample size and representativeness – One limitation in this research was the sample size. I interviewed 18 participants. It would have been prudent to have interviewed at least 30 participants and travelled further afield than I could while limited by COVID-19 lockdowns and restrictions. Using a mixed method approach, I could have also conducted an extensive online survey which would have bolstered the findings and allowed for broader and more representative participation, and data analysis by practitioner occupation. However, this only occurred to me when I was part way through a number of interviews and had experienced Covid lockdowns. In hindsight, in the difficult political and public service environment resulting in the loss of thousands of public service jobs in 2024 and 2025, which has resulted in greatly increased job insecurity and fear, I believe I would have had greater difficulty getting as many as 18 participants.

7.4.2. Future research directions

In Section 5.9, I identified some of the gaps in the relevant existing research, which were limitations for this research but could make excellent topics for further study. These, and additional further study questions, are given below, and all relate to the Aotearoa New Zealand context.

State care

- Following the Royal Commission Abuse in State and Faith-based Care report (2024), how can the State, and its public servants, actively restore the mana and well-being to children and their kin who have been separated by the State uplift intervention?
- How could kaupapa Māori whānau protection models be applied, and funded, to reduce the number of Māori babies and children being uplifted and to reunite Māori children in State care with their whānau, hapū and iwi? (For Māori researchers as a 'by Māori, for Māori, with Māori' approach is needed.)
- How can kaupapa Māori whānau protection models be applied, and funded, to reduce the number of non-Māori babies and children being uplifted and to reunite non-Māori children in State care with kin? (Māori researcher-led to keep the integrity, understanding and the application of the Kaupapa Māori models intact.)
- Oranga Tamariki do not know how many children, and young people, in State care have mental health issues or have attempted suicide – so how could this be found out so that follow-up can be done on getting appropriate support for these people?
- No data is kept on teenagers who leave State care, so how are they are faring in life? This would be a longitudinal study, monitoring factors such as whānau connection, health and well-being, but also provide data on the pipeline from State care to State prison.
- How do children who have grown up in State care parent and grandparent? Do they need additional support and what would individualised, culturally appropriate support look like?

Public servants in training and public service

- What do students training in the public service professions (health, social work, justice and policy) know about Te Tiriti and human rights and the application to their path of study and work? (This would be done as a first-year study on entry and then followed up by a final year pre- graduation study to compare the results after study.
- How can training agencies (universities, polytechnics, training providers) and schools use a consistent and evidence-based approach to teaching Te Tiriti and human rights (including

understanding of right-bearer and duty-responsibilities) so that a greater shared understanding regionally and nationally is achieved?

- What does a ‘good’ public servant and ‘good’ public service look like to the communities that are served?
- What does the ‘common good’ look like in the public service and are public servants' beliefs in relation to this?
- Is hierarchy and siloed approach (based on funding models) in the public service affecting the ability for public servants to work with individuals, families and communities in strength-based and innovative ways to enhance their lives?
- How can case studies of public service racism and discrimination be gathered and shared collectively for accountability purposes and also for public servants training?
- How can public service agencies have stronger accountability checks in place so that managers who bully staff are not promoted without demonstrating they have had personal development in this area?
- Why do public servants leak confidential information? How can internal policies and processes be improved or put in place that staff warnings or identification of risks and ‘whistleblowing’ are incorporated into policy and service advice to Ministers?
- ‘Yes Minister’ and ‘Free, Frank and Fearless Advice’ – how does ‘ego’ at the Ministerial and public service managerialism level affect policy advice and decision-making and integrity and transparency?
- We rate highly in the Corruption Perception Index but does this measure Ministerial and public service leaders’ decision-making and the use of funds, including contract tenders, based on the influence of political party donations, lobbyists, and Ministerial selected advisory groups? How do we fare with integrity and transparency regarding this measure?

Adoption

- The current Adoption Act was passed in 1955, what are the historical and current barriers that have caused the numerous attempts to reform this legislation to fail?
- No specific data is kept after adoption is legally granted, making adopted children, and adopted people and their outcomes largely invisible. There is no historical or current data collected in Aotearoa New Zealand to know how adopted children fare with their adoptive families and whether they face abuse and microaggressions?
- What are the outcomes for adopted children compared to those in State care or the general population? What does this say about adoption as an intervention?
- Do adopted people growing up in open adoption family relationships have birth identity issues?
- In open adoption arrangements, how many adoptive families foster life-long relationships with their adopted child's birth families? What does regular contact look like?
- Even though adoption numbers have greatly decreased, why do adoptions still occur in Aotearoa New Zealand and are there other alternatives to adoption?
- How are the UNCRC rights of the child, regarding birth identity and kin, upheld and protected through domestic and international surrogacy in Aotearoa New Zealand?

7.5 Conclusion

In the title of my thesis, I ask "Who cares?" This question relates to the follow-up questions:

- Who cares about the journey of the uplifted child?
- Who cares about the roles and responsibility of State duty-bearers involved in State uplifts?
- Who cares about the child in State care?

It was evident from the interviews that the research participants cared deeply about uplifted children and children in State care and wanted these interventions to be stopped or drastically improved so all children in State care are connected to kin, free from harm and have their human rights met.

The evidence shows that the State uplift intervention harms families in Aotearoa New Zealand, as it removes babies and young children from their kin. This intervention has no timeframe for kin reunification which is the ultimate in cruelty. The act of an uplift, led by Oranga Tamariki, is not in anyone's 'best interests,' let alone the child's who the State duty-bearers, as designated by UNCRC and UNDRIP, are intervening to protect. The Royal Commission of Inquiry into Abuse in Care inquiry and the Independent Children's Monitor (ICM) showed that Aotearoa New Zealand has had, and continues to have, abusers of children working in State care. Oranga Tamariki recognises that children in their care continue to live with State non-kin carers who are inadequate and who fail to meet the child's needs.

With so much evidence on the harm caused by State care, it is dangerous for the State to intervene in family life without evidence and without culturally appropriate and trauma-informed professionals who understand human rights and Te Tiriti. However, that is the public service practice to date. For many Māori children, they may be the second or third generation who has suffered from this 'clean break' State intervention.

This State uplift intervention occurs because the government system is based on legacy thinking, and practices that are entrenched in deficit thinking, racism, and discrimination. Frontline staff, often inexperienced and poorly supported operating in time-poor and inadequately resourced hierarchical bureaucracies are under immense pressure. Many leave their workplaces or careers, because they do not want to be involved in State actions that harm. Many public servants who remain, are not sufficiently competent to work cross-culturally and do not operate with a trauma-informed or community-networked bioecological practice to improve situations by building strength-based relationships with families and wider community or for Māori with wider whānau, hapū and iwi. These are the main reasons why State uplifts continue.

The public service process of giving 'free and frank' and evidence-based advice should help with decision-making and improving policy, processes and practices. However, the ability of public servants to 'fight the State machine' is difficult, particularly when their peers or managers or their

Parliamentary Minister are unable, or unwilling, to improve the status quo, despite the evidence they are provided. [This is the case with the repeal of section 7AA in 2025 which was passed despite evidence from Oranga Tamariki which said that since 2019 the placing Māori children with Māori kin, which also reflected Te Tiriti, was a successful initiative in reducing the number of Māori children in State care (OT, 2023). The Minister and Bill supporters that it did not matter whether Māori children in State care were placed with Māori kin or not (OT, 2023)]. Hence government agencies do not get to build on successful initiatives but start and stop them or replace them with initiatives that evidence says will not work, depending on the political whim of the majority Government in power.

The strict public service hierarchy also makes it difficult for all public servants to escalate things quickly, particularly for those staff not positioned at the highest levels of management decision-making. There is always the possibility that issues may not be escalated higher, due to manager preference or decision-making. Public servants financially reliant on the State for their livelihood, cannot always risk 'rocking the boat,' especially at a time when public service management or the Government are calling for the number of public servants to be greatly cut. [Bullying by managers is also an issue in the public service workplace.] This lack of 'a voice' can also include community providers who are contracted to Oranga Tamariki or any government agency and reliant on Government payment and political favour to operate.

Research, including from the Royal Commission and ICM, shows that it is difficult for children and young people in care, and their kin, to voice their concerns. The very nature of being in State care, means that children and young people are totally dependent on the State duty bearer to grant their human rights and needs. If concerns are raised, appropriate action is not always taken by the duty-bearers who may feel worn down, passive, apathetic or hostile towards the child or young person and their kin for being in the child protection system

In this hierarchical State system, it is difficult for individuals and agencies to challenge current policies and processes that cause inequities and harm without repercussions that may include being reprimanded, sidelined, fired and / or negative financial consequences. Without brave

‘whistle blowers’ identification of public service wrongdoing to strong whistleblower agencies who can withstand Parliamentary political pressure and/or experienced journalists to understand and promote this wrongdoing to a much wider audience and scrutiny, much of the examples of grossly inadequate public sector practice, abuse and criminal activity would fall into an internal ‘spiral of silence’ resulting in no change and continued harm to victims.

In 2020 and 2021, three State agencies - Office of the Children’s Commissioner, Ombudsman NZ, the Waitangi Tribunal, and their staff of public servants and one community provider Whānau Ora took the highly unusual collective stand against Oranga Tamariki and the uplifting of babies and children from kin, through their own inquiries. Other individuals, agencies and community groups also protested, following a long line of community protest, mostly Māori-led, against the Crown, and the State, going back to 1840.

Through the Royal Commission into Abuse in State and Faith-based Care, over 2,000 people who had grown up in State care stood up and gave evidence of how they had suffered in that care. Hundreds of former public servants and researchers supported their claims with written evidence. Never before in our history have so many stood up, and so much evidence been gathered, to show that uplifting children and putting them into State care doesn’t work. People have been brave; they have stood up; they do care but is the State listening? The slow response of the current Government, and in turn government agencies, to the Royal Commission’s recommendations (only 19 of 207 approved by May 2025) may indicate that most of the progress could be left to another Government to be elected in 2026, if that Government is inclined. Political and bureaucratic delays result in more abuse in care survivors dying with unresolved settlements and children and young people in State care growing away from kin and not having their basic human rights met.

Stanley and other researchers (2024) monitored State agencies responses to the Royal Commission and identified ten strategies that State agencies employed when defending their agency position in the face of evidence about the abuse of children in their care.

> These are: claiming lack of knowledge; narrowly acknowledging survivors' identities and needs; blaming others; arguing they are constrained by bureaucratic or legal settings; presenting systemic violence as individual failings; confining abuse to the past; asserting new norms of partnership; emphasising reforms; declaring decolonising futures; and proclaiming they hold the transformative solutions. (Stanley, et al., 2024, p. 2)

Stanley and her fellow researchers are right to be concerned. When a State agency minimises responsibility to strengthen "their institutional legitimacy as protectors of the vulnerable and saviours of Te Tiriti (the Treaty of Waitangi), ethics and integrity. This careful performance stands at odds with the ongoing layers of violence and harms in state care" (Stanley et al., 2024, p. 1). However, this legacy practice of 'minimising responsibility' in response to State care abuse and neglect, while being the State upholder of human rights and Te Tiriti is a key example of 'the banality of evil' as presented by a long line of 'ordinary' public servant bureaucrats led by 'ordinary' Government Ministers. This practice is based on the legacy of other non-actioned 'whistle blower' evidenced reports of abuse presented to State agencies and to Cabinet Ministers about Lake Alice in the 1970s, Social Welfare abuse and racism in *Pūao-Te-Ata-Tū* in the 1980s, and the numerous other reports that documented State abuse and harm to Māori that sat on the shelves of government departments or sit in the government archives gathering dust.

The research findings suggest that this State uplift practice does not make a lifelong positive change for the child or their original family but often puts children at further risk physically, emotionally, and sexually. Uplifts break down kinship and cultural connections while increasing maternal mental health issues and trauma for the wider family and community, including staff employed by the State. Even as the key human rights and Te Tiriti upholder, supported by all the State resources, the State fails in these duties so cannot adequately parent children in its care. To understand the State duty-bearer's difficult history as the most dysfunctional and abusive parent, a position which continues to this day, all politicians and public servants should read the Royal Commission's final report released on 24 July 2024 (RCASC, 2024). The State has the power and the

responsibility as the national human rights duty bearer, to enable the required changes. If the State, and its agencies, continues to minimise responsibility, this act of non-care effectively enables the State cycle of harm through State uplift into State care to continue, affecting yet another 'invisible' generation and the lives of their children, yet to be born.

> The report will indict successive governments for the prejudice, callousness and political calculation that rendered people in care largely invisible, and their lives dispensable. It will also put it beyond doubt that New Zealand's laws, public policies and state institutions enabled that abuse. (Winter, 2024, paras 3-4)

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Appendix A: Ethics Approval

Auckland University of Technology Ethics Committee (AUTEC)

Auckland University of Technology
D-88, Private Bag 92006, Auckland 1142, NZ
T: +64 9 921 9999 ext. 8316
E: ethics@aut.ac.nz
www.aut.ac.nz/researchethics

12 September 2019

Maria Haenga-Collins
Faculty of Health and Environmental Sciences

Dear Maria

Re Ethics Application: **19/257 Rights of the Child: the 'child only journey' from hospital birth to stranger care in Aotearoa New Zealand**

Thank you for providing evidence as requested, which satisfies the points raised by the Auckland University of Technology Ethics Committee (AUTEC).

Your ethics application has been approved for three years until 12 September 2022.

Standard Conditions of Approval

1. The research is to be undertaken in accordance with the Auckland University of Technology Code of Conduct for Research and as approved by AUTEC in this application.
2. A progress report is due annually on the anniversary of the approval date, using the EA2 form.
3. A final report is due at the expiration of the approval period, or, upon completion of project, using the EA3 form.
4. Any amendments to the project must be approved by AUTEC prior to being implemented. Amendments can be requested using the EA2 form.
5. Any serious or unexpected adverse events must be reported to AUTEC Secretariat as a matter of priority.
6. Any unforeseen events that might affect continued ethical acceptability of the project should also be reported to the AUTEC Secretariat as a matter of priority.
7. It is your responsibility to ensure that the spelling and grammar of documents being provided to participants or external organisations is of a high standard.

AUTEC grants ethical approval only. You are responsible for obtaining management approval for access for your research from any institution or organisation at which your research is being conducted. When the research is undertaken outside New Zealand, you need to meet all ethical, legal, and locality obligations or requirements for those jurisdictions.

Please quote the application number and title on all future correspondence related to this project.

For any enquiries, please contact ethics@aut.ac.nz. The forms mentioned above are available online through http://www.aut.ac.nz/research/researchethics

Yours sincerely,

Kate O'Connor

Executive Manager
Auckland University of Technology Ethics Committee

Participant Information Sheet

Date Information Sheet Produced: 12 October 2019

Project Title

Rights of the Child: the 'child only journey' from hospital birth to stranger care in Aotearoa New Zealand.

An Invitation

My name is Jo Woods, and I am currently undertaking doctoral research at the Auckland University of Technology (AUT). I would like to invite you to take part in my research project, Rights of the Child: the 'child only journey' from hospital birth to stranger care in Aotearoa New Zealand. This Information Sheet, and the attached Consent Form, can help you decide if you would like to take part.

What is the purpose of this research?

Babies leaving hospital, without their kin, start on a 'child only journey' into State care by strangers. To date, no research explicitly documents the experiences of the public sector professionals involved in this 'child-only journey.' This research will not only document these experiences but draws on the participants' knowledge and expertise of children living in State care to find ways to improve services to these children and their families. The findings of this research may be used for academic publications and presentations.

Why am I being invited to participate in this research?

You are invited to participate as a practice professional, with 10 years or more work experience, to share your insights and experience of the 'child only journey' where a newborn baby leaves hospital to go into State care. Your thoughts, expertise and experiences are important to this research and its outcomes.

How do I agree to participate in this research?

If you agree to be part of this research, you will need to sign the Consent Form which is attached to this Information Sheet. Your participation in this research is voluntary. You can withdraw from the study at any time. If you choose to withdraw from the study, then you will be offered the choice between having any data belonging to you removed or allowing it to continue to be used. However, once the findings have been produced, removal of your data may not be possible.

What will happen in this research?

As a participant in this research, you will be interviewed by me at a convenient place and time for you. This session, up to two hours long, will consist of open-ended questions, recorded on audiotape. After the interview, I will send you a transcript for you to check and you can make further comments, if you wish. After I have completed all the interviews, I can also share a summary of the collected findings with you, if you are interested.

How will my privacy be protected?

As the researcher, I will comply with all aspects of the Privacy Act (1993), and your information will only be used for the purpose for which it was gathered. All information collected in this study remains strictly confidential and will only be viewed by me and my research supervisor. The use, storage and destruction of data collected from you will fully comply with AUT Ethics Committee (AUTEC) protocol. You will be asked to choose a pseudonym and any of your information will only be known by that name in any research reports. I will not use identifying details in my study or any presentations or publication. However, if you wish to be identified in the research, you can give me your consent at the interview stage. If you talk about individual cases, as part of our research conversations, please disclose this in a way so that no other individual or family can be identified. If information about illegal behaviour is revealed in an interview, I will need to consult with my supervisor as to any appropriate action. They, in turn, will seek advice if the issue is serious. However, it is unlikely this situation will occur. If you wish to participant in this research, I will go through these points with you prior to the interview.

What are the costs of participating in this research?

If you wish to participate, it will take a total of three and a half to four hours of your time over several months. This time includes a recorded interview of up to two hours, one hour checking the interview transcript, which I will send to you and one hour if you would like to read and / or discuss the research findings, before they are published.

What are the discomforts and risks?

The main discomfort may be spending dedicated time talking about your experiences in this research area.

How will this discomforts be alleviated?

If participating in this research raises any issues for you, you may want to access your confidential workplace professional support, such as EAP. Alternatively, AUT Health Counselling and Well-being is able to offer three free sessions of confidential counselling support for adult participants in an AUT research project. These sessions are only available for issues that have arisen directly as a result of participation in the research and are not for other general counselling needs.

To access these services, you will need to:

phone: 09 921 9292 to make an appointment (this includes appointments via phone)

let the receptionist know that you are a research participant and provide the title of my research and my name and contact details as given in this Information Sheet.

You can find out more information about AUT counsellors and counselling on http://www.aut.ac.nz/being-a-student/current-postgraduates/your-health-and-well-being/counselling.

What opportunity do I have to consider this invitation?

You have two weeks to consider this invitation and during this time I will be available to answer any questions you may have. My contact details are at the bottom of this page.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified, in the first instance, to the Project Supervisor, Dr Maria Haenga-Collins, email: maria.haenga-collins@aut.ac.nz or phone: 09 921 9999 ext. 7048.

Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEC, Kate O'Connor, email: ethics@aut.ac.nz or phone: 09 921 9999 ext. 6038.

Whom do I contact for further information about this research?

You can contact me, Jo Woods (details below). Please keep this Information Sheet and a copy of the Consent Form for your future reference.

Researcher Contact Details:

Jo Woods

Phone: 021 704 680

Email: jmmwoods@gmail.com

Project Supervisor Contact Details:

Dr Maria Haenga-Collins

Phone: 09 921 9999 ext. 7048

Email: maria.haenga-collins@aut.ac.nz

Appendix C: Participants Consent Form

Project title: **Rights of the Child: the 'child only journey' from hospital birth to stranger care in Aotearoa New Zealand**

Project Supervisor: ***Dr Maria Haenga-Collins***

Researcher: ***Jo Woods***

○ I have read and understood the information provided about this research project in the Information Sheet dated 12 October 2019.

○ I have had an opportunity to ask questions and to have all questions answered.

○ I understand that the interview will be audio-taped and transcribed and that notes will be taken during the interview.

○ I understand that taking part in this study is voluntary (my choice) and that I may withdraw from the study at any time without being disadvantaged in any way.

○ I understand that if I withdraw from the study then I will be offered the choice between having any data that is identifiable as belonging to me removed or allowing it to continue to be used. However, once the findings have been produced, removal of my data may not be possible.

○ I want my name and any other identifying information to remain confidential and a pseudonym to be used in any publications (please tick one): Yes ○ No ○
If No, I consent to my name and other identifying information being used: (please tick): Yes ○

○ I agree to take part in this research.

○ I wish to receive a summary of the research findings (please tick one): Yes ○ No ○

Participant's Signature: .....

Participant's Name:.....

Participant's Contact Details (if appropriate).....

Date: .....

Note: *The Participant should retain a copy of this form.*

Appendix D: Key Terms and Concepts

In the interests of clarity, key terms and concepts described in this section provide a background context to Aotearoa New Zealand society which is relevant to understanding the study of the State child protection practice of removing children from their families and placing them with non-kin.

This research uses the American Psychological Association's Referencing Style Guide (APA 7th, 2019), as required by Auckland University of Technology (AUT). Gender-neutral language, for example., *their* instead of *her* or *his*, is used wherever possible unless it is a direct quotation (APA 7th, 2019). In Māori language, unlike English, there are no gendered pronouns (Maunsell, 1862; Mikaere, 1994) with the pronoun ia used for any individual, regardless of gender (Kupu, 2022).

In line with APA 7, when introducing an unfamiliar word or phrase which is then defined, it is first italicised, as illustrated above, however the names of books, reports, legislation, periodicals, and websites are italicised for every use (APA, 7th, 2019). Māori words are not italicised as identified in *Te Taura Whiri i te Reo Māori (Māori Language Commission) Guidelines for Māori Language Orthography* (2012).

Māori words or concepts unique to Aotearoa New Zealand have been checked for consistency against how Māori scholars define these words and cite them, and / or how they are defined in *Te Aka Māori Dictionary* (2023). A Māori word or phrase used in the first instance, or sporadically in the text, will have an English translation in brackets or be self-explanatory in the text. Following the previously mentioned Guidelines for Māori Language Orthography (2012), historical works using Māori language do not use macrons, so I have not included them. The following caution on the layers of Māori cultural and language subtleties is given by anthropologist Metge (1996). "It is necessary to recognise that Māori concepts hardly ever correspond exactly with those Western concepts which they appear, on the surface, to resemble" (Metge, cited in NZLC, 1996, s. 2.4).

The American Psychological Association's Referencing Style Guide (APA 7th) states that writers use the first person for clarity and self-reference in sections, as it is relevant (refer APA 7, 2019, s. 4.16). APA 7 rejects the convention of referring to the researcher in the third person, so I have adhered to that usage in describing the background to this research in this chapter, *Chapter 2: Research Design and Methodology*, and *Chapter 3: Research Methods* where I describe the research approach.

Governance in Aotearoa New Zealand

The Constitution Act 1986 recognises Aotearoa New Zealand's three branches of government - the Legislature (Parliament), the Executive (Cabinet and Ministers outside Cabinet, plus government departments), and the Judiciary. Each operates independently of the others. This is known as the 'separation of powers.'

The Judiciary cannot interfere with decisions of Parliament (the Legislature), such as the decision to pass a law. However, the Judiciary can review the actions of the Executive to see whether they acted within the powers given to them by legislation. This is called a 'judicial review.'

Public service

> The Public Service supports the Government to implement its policies and deliver services for New Zealanders. United by a spirit of service, public servants work every day to achieve better outcomes for people in Aotearoa New Zealand.
> (Public Services Commission, 2023, para. 1)

The term ‘public service,’ led by the Public Services Commission (PSC), has two meanings: the bureaucratic system of central and local government and the service provided by the State to the public (PSC, 2023).

The *Cabinet Manual* gives the rules for the Government of the day’s Cabinet, the formal relationship between Ministers and the public service is governed primarily by the *Public Service Act 2020* and the *Public Finance Act 1989*.

The *Public Sector Act 2020*, replacing the *State Sector Act 1988*, is significant because it focuses on unifying the public service and the more expansive State sector. Section 14 of the Act "explicitly recognises the role of public service to support the Crown in its relationships with Māori under Te Tiriti o Waitangi" (PSA, 2020, p. 1). In 2023, this role is described on the Public Services Commission website as "one of the most important roles of the Public Service" (PSC website, 2023, para. 1).

The *Public Sector Act 2020*’s definition of ‘public service’ covers all government departments, agencies, interdepartmental boards and ventures, and Crown agencies and entities (PSA, 2020, s. 10).

‘Parliament,’ located in Aotearoa New Zealand’s capital city Wellington, is where the central government's national offices have been since 1876, with regional offices around the country (Green, 2021; Levine, 2016). Until the scientific management approach was introduced in the *Public Service Act 1912*, the appointment of government officials and management of government and public finances, from 1840, was heavily influenced by political patronage, cronyism, and corruption (Yska, 2013).

The first New Zealand-born ‘public servant’ was Henry Kemp, the son of missionaries. In 1840, Kemp's bureaucratic job was to "translate and transcribe the first complete copy of the Treaty of Waitangi" (Yska, 2013, p. 10). However, this common attribution is incorrect, as the translation job from English into Māori was done by Anglican missionary Henry Williams and his son Edward, who was given one night to translate Governor Hobson's and British Consular James Busby's draft (MCH, 2017). Their work, affected by haste and a lack of Māori language knowledge, was incorrectly translated (Ngata, 1922; Orange, 1987). In 1848, while representing the Crown as Native Secretary, Kemp’s dubious public service illustrated in a poorly defined contract known as Kemp's Deed, took most of the South Island from Ngāi Tahu (Ngāi Tahu, n.d). This bureaucratic work enabled Crown breeches, privileged Kemp, and other settlers, and took the Crown 150 years to apologise in the *Ngāi Tahu Claims Settlement Act 1998* (MCH, 2021).

Child protection agencies – timeline

Child protection is an area of public law where authorities may intervene in family settings because of an allegation of harm or significant risk of harm to a child (Titterton, 2017).

For 100 years, New Zealand has had State child protection or child welfare agencies. The first agency began in 1926 with the Child Welfare Branch which was part of the Department of Education and Children’s Courts. In 1948, the Child Welfare Branch of the Department of Education became the Child Welfare Division. In 1972, the Child Welfare Division merged with the Department of Social Security and the Department of Education’s Child Welfare Division to form the Department of Social Welfare (DSW). Twenty years later in 1992, a restructure of the Department of Social Welfare resulted in the establishment of the child protection agency, the New Zealand Children and Young Persons Service. Then in 1999, the Children, Young Persons, and their Families Agency was created from the merger of the New Zealand Children and Young Persons Service and the New Zealand

Community Funding Agency. Later that same year, it became the stand-alone Department of Child, Youth and Family Services (known as Child, Youth and Family). In 2017, the Ministry for Vulnerable Children, Oranga Tamariki became a separate agency to replace Child, Youth and Family.

Child, parents, family and whānau, hapū and iwi

Article One of the United Nations Convention on the Rights of the Child (UNCRC) defines a child as an individual under the age of 18 years. This definition is applied and adapted across countries and contexts in the 21st century. In Aotearoa New Zealand, a person legally becomes an adult at 20 (Age of Majority Act 1970). However, on 26 January 2023, the UN Committee on the Rights of the Child (CRC) criticised NZ for keeping the minimum age a child could be charged with murder or manslaughter at age 10 (CRC, 2023). Before the current legislation, the Crimes Act 1961 was passed, seven was the age of criminal responsibility (Pollock, 2018).

In Aotearoa New Zealand, there are 1.2 million people under the age of 18, comprising 23% of the total population (OCC, 2022). In the government's Child and Youth Well-being [C&YW] strategy (2019), 1.6 million New Zealanders are identified as under 25 years, which is around 33% of the population (C&YW, 2019, p. 13). A quarter of children aged 0 to 14 years identify with multiple ethnicities, compared to only 3% of people over 65 years. Māori children and young people make up a quarter of the young or under-18 population but form over half of the children involved in State care (68%) and youth justice facilities (74%) (OT, 2020).

Māori traditional kinship society was different from the early British colonial society, which was male-dominated and underpinned by nuclear family structures. The earliest Polynesian explorer Kupe did not travel only with men, as did the European explorers, but came to Aotearoa with his partner and extended whānau (Beaglehole, 1961; Kaamira, 1957). Mākereti (Maggie) Papakura's The Old Time Māori (1938), described the Māori community structure, noting that "A whānau may number fifty to one hundred or more people, a hapū may contain one to three hundred or more, and an iwi may contain anywhere from three hundred to a thousand or more people" (Papakura, 1938, p. 35).

Whānau has the additional meaning of "give birth" (Durie 2001a, p. 190). Social anthropologist Metge's research on Māori families (1995), identified 11 other meanings for the word whānau, including whakapapa Mikaere (2021a) describes whakapapa as being "inherently non-hierarchical and is driven by the logic of inclusion" (p. 12).

Academic and psychiatrist Durie (1994) observed that the term whānau was increasingly applied to nuclear families or households, partly because there was no Māori word to describe the small family, although whānau and nuclear family were conceptually different. In his view, whānau serves two broad purposes: it acts as the primary support system for the physical, spiritual, and emotional care of Māori, and it provides a sense of belonging and purpose by validating one's unique identity (Durie 1998, cited in Williams et al., 2019).

Mikaere (1994) stated that pre-colonisation Māori viewed family life as part of the collective whole, so it was a collective responsibility to see that male and female, young and old roles were valued and protected in their open whānau village. European visitors, following on from Abel Tasman's visit, documented what they saw as new or different from them and were stunned that Māori men cared for children and did not hit women and children.

> According to early European observers - Samuel Marsden, Richard Taylor, Joel Polack and many others, Māori men cared tenderly for their children, taking them to formal gatherings where chiefly children asked questions and were answered by the elders. In quote after quote, these observers note with surprise that Māori women and children were not struck by their menfolk. (Salmond, 2018, p. 4)

By living communally and sharing responsibility for the children, Māori women, unlike European women, were less dependent on individual men than on the fortunes of the whānau or the hapū (Metge, 1995). By having help with childcare, Māori women were able to perform a wide range of roles, including leadership roles (Mikaere, 1994).

Health researchers Robson, Reid, and Pomare (2001) stated that it is "naive to think that the institutions of whānau, hapū and iwi have been untouched by the processes of colonisation" (Robson et al., 2001, p. 8). Legal and other systems continue to validate the nuclear family concept, thereby failing to account for alternative views and experiences such as Māori or Pasifika ideas of whānau (Cotterell et al., 2009; Pihama, 1998). The terms whānau, hapū and iwi have been in New Zealand's care and protection legislation for over 25 years, but those whakapapa groups are often overlooked as a source of input or child and whānau support (OCC, 2015). In 2022 research, the Independent Children's Monitor [ICM] identified that only 13% of Māori children in State care were connected to key people from their marae, hapū or iwi (Independent Children's Monitor, 2023).

Traditionally Māori political power was vested at the 'hapū' or basic community level (Durie, 1996; Jackson, 2018). Belich (1996) described iwi as neighbouring clusters of related hapū. "The formalised structure of the larger iwi into about 30 official tribes was mainly for the convenience of the European state and European scholars" (Belich, 1996, p. 84). Most Pākehā politicians privileged iwi over hapū (Ballara, 1998; Mutu & Jackson, 2016; Tapsell, 2001; Walker, 1990).

The main support for greater hapū recognition is that Te Tiriti was signed in 1840 on behalf of hapū, not iwi (Te Tiriti 1840). To be recognised as a hapū, territorial control of the turangawaewae (standing place, home) of the hapū and the emergence of a rangatira (leader) with mana derived through their whakapapa (genealogy) had to be in place (Walker, 1990). Matike Mai Aotearoa (2016), called for constitutional transformation to better recognise Te Tiriti 1840 and its foundations of hapū tino rangatiratanga or self-determination (Mutu & Jackson, 2016).

Appendix E: State Care Timeline 1909-2025

This timeline, taken from the Crown Response to the Abuse in Care Inquiry website (2025) lists major institutional and legislative changes and reports across the welfare, justice, education and health sectors. https://www.abuseinquiryresponse.govt.nz/for-survivors/state-care-timeline

Year	Event	Description
1909	Native Land Act	Prevented Māori from adopting children in accordance with Māori custom. The Native Land Court could make orders for adoption by Māori, but only of Māori children. Also affected marriages between Māori.
1911	Mental Defectives Act	Consolidated regulations to detain 'mentally defective' persons, allowing voluntary admission, licencing and basic requirements for institutions. Also enabled the transfer of 'feeble-minded' minors from a mental hospital to a special school.
1924	Borstals Act	The Prevention of Crime (Borstal Institutions Establishment) Act. Offenders aged 15-21 could be detained in Borstals for one to five years for 'reform', which included occupational training.
1925	Child Welfare Act	Established the Child Welfare Branch in the Department of Education and Children's Courts. Allowed for a range of residences: receiving homes, probation homes, convalescent homes, training farms and schools. Set the age of criminal responsibility at 7 years. It also required all illegitimate births to be notified to Child Welfare Officers (which continued until 1983).
1926	Child Welfare Branch set up	Based in the Department of Education, it had responsibility for the welfare of all children (whether in institutional care or in the care of family). The Superintendent of Child Welfare was responsible to both the Minister of Education and the Minister in Charge of Welfare.
1928	Mental Defectives Amendment Act	Established the Mental Hospitals Department and broadened the definition of 'mental defective', so it applied to more people. It set up residential institutions for people with intellectual disabilities and set up a Eugenics Board (disestablished in 1932).
1931	Native Land Act	Removed recognition of adoptions by Māori custom for things such as succession to native land where there was no will (unless the adoption had been registered pre-31 March 1910 and was still in place). Also impacted land development and title.
1932	Health camps	The first permanent Children's health camp was built at Otaki.
1940	Māori Purposes Act	Marriages in accordance with Māori custom, and certain earlier adoption orders, were deemed valid for specific land purposes.
1941	Separate schools added to health camps	A separate school was added to the Otaki Children's Health Camp, and subsequent permanent children's health camps were built with an associated school attached. School staff were employed and managed by the Department of Education.
1945	Māori Social and Economic Advancement Act	Established Tribal Executive Committees, Māori Wardens and Māori Welfare Officers. The latter did not have statutory responsibilities but worked with child welfare officers from under the Child Welfare Branch of Education. The Act also removed discrimination in social security that had disadvantaged Māori.
1948	Child Welfare Division	The Child Welfare Branch of the Department of Education was renamed the Child Welfare Division.

Year	Event	Description
1950	Mental Defectives Amendment	Made it compulsory for institutions caring for 'mentally defective persons' to have a medical superintendent (a qualified doctor) and for an institution with more than 100 patients to have a medical officer living in residence.
1953	The Aitken report and the Burns report	The Consultative Committee on Intellectually Handicapped Children (Aitken Report) advocated an expansion of the residential institutional model for the 'great majority of imbecile children'. The Burns report advocated for small-scale facilities in communities.
1953	Māori Affairs Act	Consolidated legislation on Māori land and set up the Department of Māori Affairs and the Board of Māori Affairs. It separated more whānau from land to which they had whakapapa links and further limited the recognition of marriages and adoptions done in accordance with Māori custom.
1954	The Mazengarb report	The Special Committee on Moral Delinquency in Children and Adolescents criticised films, comics, and declining standards of family and religious life. Later described as leading to a 'moral panic' and a focus on teenagers and teen culture as 'risky.'
1955	The Adoption Act	Codified adoption practices around a 'nuclear' family using a model of closed adoption. This cut across tikanga Māori, as it did not recognise the custom of whāngai. It also removed the restriction that Māori could only adopt Māori children. If an applicant was Māori, the adoption order was heard in the Māori Land Court.
1955	National Committee on Māori Education	The Minister of Education appointed a National Committee on Māori Education (with majority Māori membership), which agreed there should be one system of State schooling for both Māori and Pākehā. The Committee was reconstituted as the National Advisory Committee on Māori Education in 1956, reporting annually to the Minister of Education.
1956	Health Act	Affirmed the Department of Health's administration of the Mental Defectives Act 1911.
1957	The Hospitals Act	Established 18 District Health Offices and 29 locally elected Hospital Boards, to oversee hospitals and some other services. It also set up the Hospitals Advisory Council to advise the Minister of Health on the provision, control, and management of the Hospital Boards.
1957-1958	The Juvenile Crime Prevention Section	Established by Police in Christchurch in 1957 and expanded to other centres in 1958. Aimed to divert young, minor, offenders away from the Courts, so long as they admitted guilt, agreed to make amends, and their parents took responsibility for their behaviour. Policewomen were targeted to staff the Section.
1959	Superintendent of Registered Children's Homes and Child Care Centres	Appointed by the Department of Education to oversee the inspection of children's homes and childcare centres and provide advice. Part of a response to a public outcry over neglect in a day-care facility in 1958. The Child Welfare Division regulated the registration, licensing, and control of childcare centres, and appointed specialist officers to supervise them.
1960	Child Care Centre Regulations	Established minimum standards for childcare centres (also in response to the 1958 neglect case). All premises caring for three or more children had to be registered with the Child Welfare Division.

Year	Event	Description
1960	The Police Offences Amendment Act	Criminalised minors' possession or drinking of alcohol. Stricter measures were introduced for dealing with older youth offenders, including detention centres for those aged 16 to 21 years.
1961	The Hunn Report	The Department of Māori Affairs' report identified disadvantage and concluded that Māori were a 'depressed ethnic minority'. The Report noted education had a major role to play in the economic and social advancement of Māori and recommended abandoning the policy of assimilation in favour of integration.
1961	The Māori Education Foundation Act	Set up after the Hunn report, mainly using Department of Education staff, to lift Māori education standards 'equal to that of the Pākehā' by encouraging Māori into secondary and tertiary education.
1961	The Crimes Act 1961	Raised the age of criminal responsibility from 7 to 10 years and included statutory confirmation of the common law principles that parents, care providers and schools could use force to correct the behaviour of children (Section 59).
1961	The Child Welfare Amendment Act	Amended the Child Welfare Act 1925 to allow a child or parent to request, after one year, a review of a committal or supervision order.
1962	The Māori Welfare Act (later the Māori Community Development Act)	Updated the Māori Social and Economic Advancement Act 1945. It enabled the appointment of Honorary Welfare Officers, established the New Zealand Māori Council, and added specific functions for Māori Wardens. Tribal committees were replaced by committees representing mainly geographic areas that did not always reflect iwi areas of interest. In 1979 the Act's title was changed to the Māori Community Development Act.
1962	Māori Land Court adoptions ceased	All adoptions became processed by the Magistrates Court, and the separate Māori birth and death registers were combined.
1962	Mental Health Division	The Department of Health was reorganised into six divisions, including one mental health division.
1962	The Currie Report	Report of the Commission on Education in New Zealand reinforced the State's provision and control of education. Advocated equality of opportunity, drew attention to the disparity in Māori education and recommended Te Reo as an optional subject at secondary level.
1964	The Education Act	Allowed the Minister to establish 'any special class, clinic, or service' and outlined conditions to compulsorily enrol 'certain children' who might be required to attend. Children 'suffering from a disability of the body or mind' were not eligible to enrol in regular schools, and parents remained responsible for their education. The Act also provided for the training of teachers for special education.
1968	Police Youth Aid Section	Established after an overhaul of the old Juvenile Crime Prevention Section to work more closely with young people and avoid them entering the Court system.
1968	The Guardianship Act	Defined and regulated the authority of parents as guardians of their children, their power to appoint guardians, and the powers of the Courts in relation to the custody and guardianship of children.
1969	The Status of Children Act	Removed the legal distinction between legitimate and illegitimate children.
1969	The Mental Health Act	Replaced the Mental Defectives Act 1911, revised the definition of mental disorder, and included 'informal patients' admitted to a psychiatric

Year	Event	Description
		institution outside the Act who could leave at any time (provided they were not 'disordered'). For the first time the Act set time limits around patients being subject to compulsory detention.
1969	Integrated schools	The separate Māori school system administered by the Department of Education was abolished. Management of the 105 Māori primary schools and remaining Māori district high schools were transferred to education board control. Māori High schools had been closing or transferring since the mid-1950s.
1971	Joint 'J' Teams	Set up to support young Māori in cities. Included Police, Child Welfare, Māori Affairs and voluntary groups (disbanded in 1980).
1971 - 1972	The Department of Social Welfare Act	Merged the Department of Social Security and the Department of Education's Child Welfare Division to form the Department of Social Welfare (DSW), which began operating on 1 April 1972. DSW was responsible for child welfare, but residential special schools for 'hearing handicapped, maladjusted and backward children' remained with the Department of Education.
1972	Mental Health Amendment Act	Transferred control of psychiatric hospitals from the Department of Health to Hospital Boards
1972	Lake Alice Child and Adolescent Unit opened	The Unit operated for six years but children and young people may have been treated in Lake Alice prior to the unit being opened.
1973	The Social Security Amendment Act	Established the Domestic Purposes Benefit (DPB), to support sole parents (over the age of 16). The DPB was also available for people to care for an adult who otherwise would have needed to be in hospital. The DPB helped give women economic independence and may have helped some whānau Māori keep their children.
1973	Royal Commission of Inquiry into Hospital and Related Services	Rejected the view that the majority of mentally handicapped people should be placed in institutional care from the age of five. Recommended review of psychopaedic services and that mentally handicapped people should not be in psychiatric hospitals.
1974	Children and Young Persons Act	Replaced the Child Welfare Act 1925 and separated children (aged under 14 years) and young people (14–17 years). Only young people could be referred to the Children and Young Persons Court. The Act also modernised the framework for Youth Aid Services, including preventative work with young people, including the use of informal warnings or sanctions as an alternative to arrest.
1975	Treaty of Waitangi Act	Established the Waitangi Tribunal and began to recognise Māori rights under the Treaty. Initially, its scope of was limited to contemporary grievances arising after 1975, but a 1985 amendment enabled the Tribunal to investigate claims going back to 1840.
1975	The Disabled Persons Community Welfare Act	Provided financial and other assistance for disabled people, and support for private organisations that provide facilities for disabled people to help them stay in the community. Allowed the Department of Social Welfare to pay up to four weeks respite care for a disabled child, and a Disability Allowance of up to $8 a week, subject to an income test.

Year	Event	Description
1975	Private Schools Conditional Integration Act	Facilitated the conditional and voluntary integration of a private school into the State education system, on the basis that the school's special character (religious or philosophical belief) would be 'protected' and 'safeguarded'. 249 Catholic and 9 non-Catholic private schools had integrated by 1983.
1976	McCombs Report (Towards Partnership)	Criticised the lack of Māori, Pacific people and women in school governance, the isolation of school boards from communities and the concentration of power in the Department of Education.
1978	Lake Alice Child and Adolescent Unit closed	The Child and Adolescent Unit at Lake Alice psychiatric hospital closed.
1979	Intensive Foster Care schemes	The Department of Social Welfare established Intensive Foster Care schemes to match more difficult children with carefully selected foster parents, who received training, advice and support.
1980	The Family Court Act	Established the Family Court. Its jurisdiction included marriage and its dissolution, adoption, guardianship, paternity, matrimonial property and spousal and child maintenance. (Later expanded further to include care of children and child protection and welfare)
1981	Borstals closed	The last of the borstals was closed by the Criminal Justice Amendment (No 2) Act 1980.
1982	Police national register of complaints	The first system to track Police complaints, and how they were dealt with. The register revealed more complaints than expected the prominence of excessive use of force (especially at stations after arrest), prevalence of some bad practices (such as strip-searches in public), and the recurrence of some officers' names in complaints.
1982	Kōhanga reo	The first kōhanga reo was supported by the Department of Māori Affairs. A year later, there were 100 (currently over 460). As well as reviving Te Reo Māori, the aims included immersing children and whānau in Māori child rearing practices.
1982	The Johnson Report	Followed a 1979 Human Rights Commission Inquiry into Auckland residences and the 1978 Auckland Committee on racism and Discrimination (ACORD) inquiry conducted by a group of social workers into residences in Auckland. Identified significant problems with residential practice including: overcrowding, use of secure care and disrupted social work practice.
1983	The Area Health Boards Act	Established 14 Area Health Boards to gradually replace the Hospital Boards and District Health Offices. The change was completed when the Local Government Act 1989 abolished Hospital Boards.
1983	Police Directorate of Internal Affairs	Established to manage discipline, complaints and related appeals. New policies were introduced for dealing with complaints made in Police custody.
1985	The Child Care Centre Regulations	Amended the 1960 minimum standards for childcare centres, required every centre to have a trained supervisor, and prohibited corporal punishment. The Childcare Accreditation Board was required to assess training courses and assist the Director-General of Education to determine the qualifications for childcare centre staff.

Year	Event	Description
1985	The Adult Adoption Information Act	Enabled adopted children and birth parents to access information about each other but allowed birth parents to request a veto on their information so that the child may not have access to the information.
1986	Ministerial Review of Department of Education Residential Special Schools	Examined the seven residential special schools (which served 396 children and employed 350 staff) and recommended they be consolidated, as some children's needs could be met in their local area. The review resulted in the closure of Campbell Park School, with services consolidated at Salisbury and Hogben Schools.
1986	Residential Care Regulations	The Children's and Young Persons (Residential Care) Regulations represented the first time that practices for the care of children and young people in social welfare residences were set out in statute.
1986	Early childhood services integrated within the education system	Responsibility for the funding and administration of early childhood care and education services was transferred from the Department of Social Welfare to the Department of Education on 1 July 1986.
1986	Puao-Te-Ata-Tu	The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare (DSW). It identified institutional racism in DSW and in wider New Zealand society and found DSW to be a 'highly centralised bureaucracy insensitive to the needs of many of its clients'. It also suggested funding community work to strengthen Māori networks and family links. In response, DSW accelerated moves away from foster care and residential institutions, closing most institutions, reorganising those that remained, introducing new residential care regulations and reallocating resources to community-based alternatives.
1986	Te Whainga i Te Tika – In Search of Justice	The report of the Advisory Committee on Legal Services raised concerns about: children lacking effective legal protections; young people not understanding what was happening in courtrooms; institutional racism; and identified children and young people under the control of government departments as especially vulnerable
1987	Corporal punishment	Corporal punishment in schools was abolished in practice (by policy) in 1987 but not legislatively until 1990.
1988	The Mason Report	The "Committee of Inquiry into Procedures used in Certain Psychiatric Hospitals in Relation to Admission, Discharge or Release on Leave of Certain Classes of Patients", investigated the treatment of patients who had a crossover with the justice system (particularly violent offenders). As a result, a network of regional psychiatric secure units such as Auckland's Mason Clinic was set up. It also called for integrated bicultural services to better meet Māori needs, acknowledging that psychiatric assessments used a western model that did not consider family, culture and spiritual identity.
1988	The Picot Report and Tomorrow's Schools	The Picot Report (Administering for Excellence: Effective Administration in Education) identified: over-centralised decision-making; complexity; lack of information and choice; lack of effective management practices; and powerlessness among parents, communities and staff. Government's

Year	Event	Description
		policy response, Tomorrow's Schools, agreed with the Picot Report, and by the end of 1991, most of its major reforms were either in place or underway.
1989	The Education Act (Department of Education to the Ministry of Education)	Gave effect to Tomorrow's Schools, devolving the school system into approximately 2,600 self-managing schools, governed by elected boards of trustees (the legal employer of all school staff) and managed by Principals (as standalone Crown entities). Boards of trustees were responsible for making sure their schools were physically and emotionally safe places for students and staff. The Department of Education was abolished (along with the regional Education Boards and Boards of Governors) and replaced with a smaller Ministry of Education. A range of new regulatory agencies were introduced, including the Education Review Office, NZ Qualifications Authority, and the Teacher Registration Board. The Act also provided for special education for people under-21 in schools, special schools, special classes, clinics or services.
1989	The Children, Young Persons, and Their Families Act	Arose from concerns about over-formalised treatment of juveniles, allegations of harsh treatment and racism (e.g. in Puao te Ata tu), and a lack of public accountability for its actions. Internationally, there was increasing recognition of children as having legal rights. Distinguished between 'care and protection' and 'youth justice', acknowledged the rights and responsibilities of families and set up Family Group Conferences. Imprisonment became an intervention of last resort and Police Youth Aid dealt with most offending. The Act also established the Office of the Children's Commissioner.
1990	The Education Amendment Act	Prohibited the use of force (by way of correction or punishment) by anyone employed by a board of trustees, or supervising or controlling children, in an early childhood service, home-based care service or registered school.
1990	Police Complaints Authority	In its first year 795 complaints were received, including death/ serious injury, harassment/excessive attention, suicide in Police care and the mistreatment of children. The Authority estimated 20 per cent of complaints were wholly or partially sustained.
1990	Te Kōhanga Reo	Following the disestablishment of the Department of Māori Affairs, kōhanga reo operations were moved to the Ministry of Education.
1992	Department of Social Welfare restructure	Five business units were created: the New Zealand Income Support Service; New Zealand Children and Young Persons Service; New Zealand Community Funding Agency; Social Policy Agency; and the Corporate Office.
1992	The Education (Home-Based Care) Order	Set out a code of practice for chartered home-based early childhood education services (providing education or care to fewer than five children under the age of 6 years). The regulations were replaced by Licensing Criteria for Home-Based Education and Care Services 2008.
1992	The Mental Health (Compulsory	Replaced the Mental Health Act 1969 and revised provisions for compulsory assessment and treatment. The Act had a new definition of mental disorder and set out patients' rights, and processes, reviews and

Year	Event	Description
	Assessment and Treatment) Act	inquiries to protect them. The intent was to provide treatment in the least intrusive and restrictive way.
1992	Police internal tribunal system	Established to deal with disciplinary matters of insufficient seriousness to place before the criminal Courts.
1993	Ministry of Health, Regional Health Authorities and Crown Health Enterprises	Established to replace Department of Health and Area Health Boards. Residual Health Management Unit (later renamed the Crown Health Financing Agency) took over the remaining responsibilities for Area Health Board assets and liabilities not transferred to Regional Health Authorities and Crown Health Enterprises.
1996	The Education Amendment Act	Increased the Teacher Registration Board's responsibility to ensure teachers met 'satisfactory teacher' standards throughout their careers. It required all teachers to show evidence of meeting the standards when renewing their practising certificates and made it illegal for state and state-integrated schools, other than kura kaupapa Māori, to employ people in permanent teaching posts who did not have a practising teachers' certificate.
1998	Department of Work and Income (known as WINZ)	Established with the merger of Income Support Service and the New Zealand Employment Service, Community Employment Group and Local Employment Co-ordination.
1998	Education (Early Childhood Centres) Regulations	Required all early learning services (caring for three or more children under the age of 6 years) to be licensed, and set minimum standards for child protection, health and safety, curriculum, premises /facilities, qualification levels, and management. Allowed the Secretary for Education to immediately suspend a centre's licence.
1999	Department of Child, Youth and Family Services establishment	Children, Young Persons and their Families Agency established with the merger of the New Zealand Children and Young Persons Service and the New Zealand Community Funding Agency. Later in the year, it became the stand-alone Department of Child, Youth and Family Services (known as Child, Youth and Family).
1999	Ministry of Social Policy	Established by the amalgamation of the Social Policy Agency and Corporate Office of the former Department of Social Welfare with the addition of a new Purchasing and Monitoring Group.
2001	The Education Standards Act	The Act regulated school boarding houses, introduced compulsory registration for kura kaupapa and early childhood teachers, and required complaints about teachers conduct, competence, or serious misconduct to be reported to the Teachers' Council. It also amended the Education Act 1989 to require mandatory police vetting for all teachers, non-teaching staff, and contractors every three years.
2001	Ministry of Social Development	Established by the amalgamation of the Ministry of Social Policy and the Department of Work and Income.
2001	District Health Boards	District Health Boards established, replacing the Crown Health Enterprises.
2001–2002	Lake Alice apology	Government apology and compensation to approximately 180 former patients of the Lake Alice Hospital Child and Adolescent Unit (1972–1978) after a private inquiry into mistreatment in the Unit.
2002	Office for Disability Issues	Established within the Ministry of Social Development.

Year	Event	Description
2005	The Education (Hostels) Regulations	Prescribed a hostel licensing system and checks on operators, with options for direct intervention if serious safety concerns were identified. (Hostels do not include private boarding arrangements, but include: residential special schools, health camps, state and state-integrated schools' boarding hostels, and private hostels for international students attending registered schools)
2006	Child, Youth and Family merger	Child, Youth and Family merged as a service line within the Ministry of Social Development.
2006	Kimberley Centre closed	The last residential disability care facility was closed (the Kimberley Centre in the Horowhenua).
2006	Claims Resolution Team	Set up inside the Ministry of Social Development to respond to claims of historic abuse or neglect against Child, Youth and Family or its predecessor agencies.
2007	Te Aiotanga:	The Report of the Confidential Forum for Former In-Patients of Psychiatric Hospitals (Te Aitotanga) summarised and evaluated the process of the Confidential Forum and summarised what the Forum heard from former patients and their family members and support people, and former staff. Follow up actions were described.
2008	The Confidential Listening and Assistance Service (CLAS)	An independent body set up for people to talk confidentially about their experiences, to help them identify (and get assistance to meet) their needs, and to refer those who want to follow up their concerns to a Government agency. When it closed in 2015, the Confidential Listening and Assistance Service reported that of the 1,103 people they had met 626 reported being abused while in the care of the State.
2012	Crown Health Financing Agency	The Crown Health Financing Agency was disestablished and its assets and liabilities transferred to the Ministry of Health, including responsibility for addressing claims of any historic abuse that occurred before 1 July 1993.
2012	Health camp schools closed	Following the Education Review Office's recommendation that the Ministries of Education and Social Development examine the role of health camps and their schools within the wider provision of services for students with moderate to severe behaviour difficulties, the health camp schools were closed. Responsibility for helping children with behavioural and social needs was contracted to Stand Children's Services.
2014-2015	The Vulnerable Children's Act and the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015	The Act introduced new requirements for children's worker safety checking. State services and organisations providing government-funded services to children and families were required to have a Child Protection Policy setting out their commitment to child protection and providing information on how staff should respond when they have concerns about the safety and well-being of children. The regulations set out the details of the mandatory safety check. Anyone convicted of a specified offence could not be employed as a core children's worker unless they had an exemption.
2017	Oranga Tamariki	The Ministry for Vulnerable Children, Oranga Tamariki was established, as a separate agency to replace Child, Youth and Family.

Year	Event	Description
2017	The Education (Update) Amendment Act	Provided a legal framework for the appropriate use of physical restraint by teachers and authorised staff, allowing physical restraint only where there was a serious threat to safety. It also prohibited the use of seclusion in early childhood services, ngā kōhanga reo, schools and kura.
2018	Abuse in Care Royal Commission	The Government announced the establishment of the Royal Commission of Inquiry into Historical Abuse in State Care (later extended to include Faith-Based Institutions). The Royal Commission's contextual hearing, its first substantive public hearing, was held in November 2019.
2024	Abuse in Care Royal Commission	The Royal Commission ended on 25 June 2024. Its final report and recommendations Whanaketia, Through pain and trauma, from darkness to light Whakairihia ki te tihi o Maungārongo was publicly released on Wednesday 24 July 2024 on its website(external link)(external link).
2024	The Government Apology	On 12 November 2024, the Prime Minister Rt Hon Christopher Luxon apologise to survivors of abuse in care. Public apology to survivors of abuse in care. This apology was followed by separate apologies by chief executives of several government agencies, including Oranga Tamariki, Crown Law, Ministry of Education and Ministry of Social Development.

Appendix F: Te Tiriti o Waitangi -full text (HRC, 2023)

Te Tiriti o Waitangi

The Treaty Of Waitangi

Original Maori Text *(with literal translation)*

Ho kupu whakataki. Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me Nga Hapu o Nu Tirani, i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki to Rongo ki a ratou me to ratou katoa hoki, kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai whakarite ki nga tangata maori o Nu Tirani. Kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini, ki nga wahi katoa o te wenua me nga motu. Na te mea hoki he tokomaha ke nga tangata o tona iwi kua noho ki tenei wenua, a e haere mai nei.

Na, ko te Kuini e hiahia ana kia wakaritea te Kawanatanga, kia kaua ai nga kino e puta mai ki te tangata maori ki te pakeha e noho tahi ana.

Na, kua pai te Kuini kia tukua a hau, a WIREMU HOPIHONA, he Kapitana i te Roiara Nawe, hei Kawana mo nga wahi katoa o Nu Tirani, o tukua atanei amua atu ki te kuini, e mea atu ana ia ki nga Rangatira o te Wakaminenga o nga Hapo o Nu Tirani, me era Rangatira atu, enei kupu ka korerohia nei.

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga, me nga Rangatira katoa hoki, kihai i uru ki taua Wakaminenga, ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua. *The Chiefs of the Confederation, and all the Chiefs who have not joined the Vast Confederation give absolutely to the Queen of England for ever the complete government over their land.*

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira, ki nga Hapu, ki nga tangata katoa o Nu Tirani, te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga, me nga Rangatira katoa atu, ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua, ki te ritenga o te utu e wakaritea ai e ratou ko te hoa hoko e meatia nei e te Kuini hei hoa hoko mona. *The Queen of England agrees to protect the Chiefs, the Subtribes, and all the people of New Zealand in the unquilled exercise of their chieftainship over their lands, their villages, and all their treasures. But on the other hand the Chiefs of the Confederation and all the other Chiefs will sell land to the Queen at the price agreed by the person owning it and by the person buying it (the latter being appointed by the Queen as her purchase agent.*

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani. Ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani. *For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand, and will give them all the rights and duties of citizenship, as the people of England.*

[signed] W. Hobson
Consul and Lieutenant-Governor

Na ko matou ko nga Rangatira o te Wakaminenga o nga Hapu o Nu Tirani, ka tuhituhi nei ki tenei. Ko matou katoi nga Rangatira o Nu Tirani, ka tiho nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou. Koia ka tohungia ai o matou ingoa o matou ingoa hoki. Ka meatia tenei ki Waitangi, i te one o nga ra o Pepuere, i te tau kotahi mano, e waru rau, e wa tekau, o to tatou Ariki.

The Fourth Article. Two churchmen, the Catholic Bishop Pompallier and the Anglican Missionary William Colenso, recorded a discussion on what today would be called religious freedom and customary law. In answer to a direct question from Pompallier, Hobson agreed to the following statement. It was read to the meeting before any of the chiefs had signed the Treaty.

E mea ana te Kawana ko nga whakapono katoa o Ingarani, o nga Weteriana, o Roma, me te ritenga Maori hoki o tanina ngatahitia e ia.

Ko te Tuawha

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand, and the separate and Independent Chiefs who have not become members of the Confederation, cede to Her Majesty the Queen of England, absolutely and without reservation, all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess, over their respective Territories as the sole Sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third

In consideration thereof, Her Majesty the Queen of England extends to the Natives of New Zealand Her Royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. Hobson
Lieutenant-Governor

Now, therefore, We, the Chiefs of the Confederation of the United Tribes of New Zealand, being assembled in Congress at Victoria, in Waitangi, and We, the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully acquainted with the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which, we have attached our Signatures or marks at the places and the dates respectively specified. Done at Waitangi, this Sixth day of February, in the year of Our Lord one thousand eight hundred and forty.

Translation: the Governor says that the several faiths (beliefs) of England, of the Wesleyans, of Rome, and also Maori custom shall alike be protected by him.

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Appendix G: UNCRC, 1989 - summary (UNICEF, 2022)

A summary of the

United Nations Convention on the Rights of the Child

unicef

Article 1 (definition of the child)
Everyone under the age of 18 has all the rights in the Convention.

Article 2 (without discrimination)
The Convention applies to every child whatever their ethnicity, gender, religion, abilities, whatever they think or say, no matter what type of family they come from.

Article 3 (best interests of the child)
The best interests of the child must be a top priority in all actions concerning children.

Article 4 (protection of rights)
Governments must do all they can to fulfil the rights of every child.

Article 5 (parental guidance)
Governments must respect the rights and responsibilities of parents to guide and advise their child so that, as they grow, they learn to apply their rights properly.

Article 6 (survival and development)
Every child has the right to life. Governments must do all they can to ensure that children survive and grow up healthy.

Article 7 (registration, name, nationality, care)
Every child has the right to a legally registered name and nationality, as well as the right to know and, as far as possible, to be cared for by their parents.

Article 8 (preservation of identity)
Governments must respect and protect a child's identity and prevent their name, nationality or family relationships from being changed unlawfully. If a child has been illegally denied part of their identity, governments must act quickly to protect and assist the child to re-establish their identity.

Article 9 (separation from parents)
Children must not be separated from their parents unless it is in the best interests of the child (for example, in cases of abuse or neglect). A child must be given the chance to express their views when decisions about parental responsibilities are being made. Every child has the right to stay in contact with both parents, unless this might harm them.

Article 10 (family reunification)
Governments must respond quickly and sympathetically if a child or their parents apply to live together in the same country. If a child's parents live apart in different countries, the child has the right to visit both of them.

Article 11 (kidnapping and trafficking)
Governments must take steps to prevent children being taken out of their own country illegally or being prevented from returning.

Article 12 (respect for the views of the child)
Every child has the right to say what they think in all matters affecting them, and to have their views taken seriously.

Article 13 (freedom of expression)
Every child must be free to say what they think and to seek and receive information of any kind as long as it is within the law.

Article 14 (freedom of thought, belief and religion)
Every child has the right to think and believe what they want and also to practise their religion, as long as they are not stopping other people from enjoying their rights. Governments must respect the rights of parents to give their children guidance about this right.

Article 15 (freedom of association)
Every child has the right to meet with other children and young people and to join groups and organisations, as long as this does not stop other people from enjoying their rights.

Article 16 (right to privacy)
Every child has the right to privacy. The law should protect the child's private, family and home life.

Article 17 (access to information from mass media)
Every child has the right to reliable information from the mass media. Television, radio, newspapers and other media should provide information that children can understand. Governments must help protect children from materials that could harm them.

Article 18 (parental responsibilities; state assistance)
Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must help parents by providing services to support them, especially if the child's parents work.

Article 19 (protection from all forms of violence)
Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and mistreatment by their parents or anyone else who looks after them.

Article 20 (children deprived of a family)
If a child cannot be looked after by their family, governments must make sure that they are looked after properly by people who respect the child's religion, culture and language.

Article 21 (adoption)
If a child is adopted, the first concern must be what is best for the child. The same protection and standards should apply whether the child is adopted in the country where they were born or in another country.

Article 22 (refugee children)
If a child is a refugee or seeking refuge, governments must ensure that they have the same rights as any other child. Governments must help in trying to reunite child refugees with their parents. Where this is not possible, the child should be given protection.

Article 23 (children with disability)
A child with a disability has the right to live a full and decent life in conditions that promote dignity, independence and an active role in the community. Governments must do all they can to provide free care and assistance to children with disability.

Article 24 (health and health services)
Every child has the right to the best possible health. Governments must provide good quality health care, clean water, nutritious food and a clean environment so that children can stay healthy. Richer countries must help poorer countries achieve this.

Article 25 (review of treatment in care)
If a child has been placed away from home (in care, hospital or custody, for example), they have the right to a regular check of their treatment and conditions of care.

Article 26 (social security)
Governments must provide extra money for the children of families in need.

Article 27 (adequate standard of living)
Every child has the right to a standard of living that is good enough to meet their physical, social and mental needs. Governments must help families who cannot afford to provide this.

Article 28 (right to education)
Every child has the right to an education. Primary education must be free. Secondary education must be available to every child. Discipline in schools must respect children's human dignity. Wealthy countries must help poorer countries achieve this.

Article 29 (goals of education)
Education must develop every child's personality, talents and abilities to the full. It must encourage the child's respect for human rights, as well as respect for their parents, their own and other cultures, and the environment.

Article 30 (children of minorities)
Every child has the right to learn and use the language, customs and religion of their family whether or not these are shared by the majority of the people in the country where they live.

Article 31 (leisure, play and culture)
Every child has the right to relax, play and join in a wide range of cultural and artistic activities.

Article 32 (child labour)
Governments must protect children from work that is dangerous or might harm their health or education.

Article 33 (drug abuse)
Governments must protect children from the use of illegal drugs.

Article 34 (sexual exploitation)
Governments must protect children from sexual abuse and exploitation.

Article 35 (abduction)
Governments must ensure that children are not abducted or sold.

Article 36 (other forms of exploitation)
Governments must protect children from all other forms of exploitation that might harm them.

Article 37 (detention)
No child shall be tortured or suffer other cruel treatment or punishment. A child shall only ever be arrested or put in prison as a last resort and for the shortest possible time. Children must not be put in a prison with adults and they must be able to keep in contact with their family.

Article 38 (war and armed conflicts – see 'Optional protocols')
Governments must do everything they can to protect and care for children affected by war. Governments must not allow children under the age of 15 to take part in war or join the armed forces.

Article 39 (rehabilitation of child victims)
Children neglected, abused, exploited, tortured or who are victims of war must receive special help to help them recover their health, dignity and self-respect.

Article 40 (juvenile justice)
A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to help from a lawyer and a fair trial that takes account of their age or situation. The child's privacy must be respected at all times.

Article 41 (respect for better national standards)
If the laws of a particular country protect children better than the articles of the Convention, then those laws must stay.

Article 42 (knowledge of rights)
Governments must make the Convention known to children and adults.

The Convention has 54 articles in total. Articles 43–54 are about how adults and governments must work together to make sure all children get all their rights, including:

Article 45
UNICEF can provide expert advice and assistance on children's rights.

Optional protocols
In 2000, the UN General Assembly adopted two optional additions to strengthen the Convention. One protocol required governments to increase the minimum age for recruitment into the armed forces from 15 years and to ensure that members of their armed forces under the age of 18 do not take a direct part in armed conflict.

The other protocol provides detailed requirements for governments to end the sexual exploitation and abuse of children. It also protects children from being sold for non-sexual purposes – such as other forms of forced labour, illegal adoption and organ donation.

Appendix H: Te Tiriti, UNCRC and Domestic Legislation

Te Tiriti, UNCRC and domestic legislation summary relevant to the uplift practice

Te Tiriti o Waitangi 1840 **Principles (rights) that apply to uplift practice** ***NZ Context***	**UN Convention on Rights of the Child 1989** **Rights that apply to State uplift practices** ***Global and NZ Contexts***
Key rights relevant to State uplift practices Article 2 - The guarantee of te tino rangatiratanga regarding taonga – i.e. children (Metge and Durie-Hall, 1989). Te Tiriti 1840 principles defined by the Waitangi Tribunal and Courts in the context of specific cases and claims: 1. Partnership 2. Reciprocity 3. Mutual benefit 4. Active protection 5. Redress 6. The duty to act reasonably, honourably, and in good faith 7. The duty to make informed decisions (He Tirohanga o Kawa ki Te Tiriti 1840 o Waitangi Court & Waitangi Tribunal, 2002) *He Whetū Mārama*, the Environment Protection Agency's framework is guided by four principles of Te Tiriti 1840 o Waitangi (Te Tiriti 1840): • Waka hourua: Partnership • Tiakitanga: Protection • Whai wāhi: Participation • Pito mata: Potential He Papupua (2019) *Vision 2040*, based on Te Tiriti 1840 and the UNDRIP 2007 and organised around the themes of: • Rangatiratanga; • Participation in kāwanatanga Karauna; • Lands, territories, and resources; • Culture; and Equity	**Key rights relevant to State uplift practices** **Protection** Article 2: The right to be protected from discrimination Article 3: The right to have adults work "in the best interests of the child" The Convention also explicitly refers to Art. 3 in other articles: Article 9: Separation from parents Article 10: Family reunification Article 18: Parental responsibilities; Articles 19 & 34: The right to be kept safe Article 20: The right to an appropriate home, deprivation of family environment and alternative care; Article 21: Adoption – "in the best Interests" Article 25: Rights in foster care Article 37 of UNCRC requires that children are not subject to 'cruel, inhuman or degrading treatment or punishment' c): separation from adults in detention; Article 38: Conflict Article 40: Injustice **Provision** Articles 5, 27: Rights to minimum standards of family life Articles 6, 23: Physical care Article 18: Access to parental care Articles 24, 28: Access to education & health Article 26: Social security) Article 29: Special care (development) Article 31: Play, recreation, culture, and leisure **Participation** Articles, 7, 8, 30 - Civil and political rights, such as the right to a name and an identity (), to be consulted and to be taken into account (Article 12), to physical integrity and to privacy (Article 16), to information (Article 17), to

Te Tiriti o Waitangi 1840 Principles (rights) that apply to uplift practice *NZ Context*	UN Convention on Rights of the Child 1989 Rights that apply to State uplift practices *Global and NZ Contexts*
	freedom of speech and opinion and to challenge decisions made on their behalf (Articles 13, 14) Article 40, paragraph 2 (b) (iii): procedural guarantees, including presence of parents at court hearings for penal matters involving children in conflict with the law
Domestic human rights legislation: Bill of Rights Act 1990, Human Rights Act 1993, Privacy Act 1993, Crimes of Torture Act 1989 **Child legislation:** • Oranga Tamariki Act 1989 mentions UNCRC twice • Care of Children Act 2004 – does not mention UNCRC but has "in the best interests" intent • Children's Amendment Act 2018 recognises "children should be viewed in the context of their families, whānau, hapū, and iwi, other culturally recognised family groups, and communities" • Children and Young People's Commission Act 2022 monitors Oranga Tamariki, the primary role as a children's advocate in line with domestic legislation and given effect to Te Tiriti (sec. 6) and UNCRC (sec. 8) and seeks to improve a child's well-being "within (without limitation) the context of their families, whānau, hapū, iwi, and communities".	**Other international human rights treaty obligations** The following United Nations international human rights treaties that New Zealand supports have developed from the Universal Declaration of Human Rights 1948. • International Covenant on Civil Political Rights 1966 • International Covenant on Economic, Social and Cultural Rights 1966 • International Convention on the Elimination of All Forms of Racial Discrimination 1965 • Convention on the Elimination of All Forms of Discrimination Against Women 1979 • Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 • UN Convention on the Rights of the Child 1989 • UN Convention on the Rights of Persons with Disabilities 2006 • Declaration on the Rights of Indigenous peoples 2007 New Zealand has not yet supported: • International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families • International Convention for the Protection of all Persons from Enforced Disappearance