

IN THE WAITANGI TRIBUNAL

**WAI 2915
WAI 1911
WAI 2408**

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

**IN THE MATTER
AND** of the Oranga Tamariki Urgent Inquiry (Wai 2915)

**IN THE MATTER
AND** of a claim by Aaron Smale and Toni Jarvis (Wai 1911)

IN THE MATTER of a claim by Teresa Aporo on behalf of herself and her siblings (Wai 2408)

SPEAKING NOTES OF LEONARD WARREN COOK

Dated: 29 July 2020



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Introduction

1. My name is Leonard (Len) Warren Cook. I am a professional statistician.
2. I graduated from the University of Otago in 1971 with BA (Hons) in Mathematics and Statistics.
3. My career in official statistics began in 1971 and has included the development, preparation, analysis and review of official statistics for Statistics New Zealand (1971 – 2000) and the UK Office for National Statistics (2000-2005). I currently work as a part time member of the Remuneration Authority.
4. I have provided an affidavit dated 11 February 2020 recorded as **#A17** and a brief of evidence dated 16 July 2020 and recorded as **#A40**.

Limitations of administrative counts

Oranga Tamariki numbers make little sense without other related data

5. The counts provided by Oranga Tamariki (OT) need to be placed alongside knowledge we also have from other sources in order to ensure that we properly understand what they tell us. Counts that OT makes of those entering care are firstly measures of institutional workloads. To have an understanding of the connection of institutions to the public and groups within it including Māori, it is important to relate these administrative counts to statistics of the groups in the population at large that come from New Zealand's well developed system of population statistics. Through connecting OT administrative counts to population statistics, we measure the scale of the impact on the population groups of the state action, and also measures of disproportionality.

Māori statistics are complex due to a dynamic population

6. The dynamics of Māori population change continue to be different from the non-Māori population. For well over a century those differences have magnified the long-term impact of child welfare and justice policies on Māori. Differences in the rate of growth, the relative numbers involved, the age distribution and urbanisation have each played a part at times in making Māori an extraordinarily dynamic population. Ignorance of these dynamics played a part in the high rates of Māori being taken into state custody over the two decades up to the late 1980s.

Numbers that institutions focus on tell us about the nature of the institutions

7. Counts of the people connected to institutions, whether it be of Oranga Tamariki or the prison service, tell us more about the institutions themselves, than the way that the laws associated with those institutions impact on groups in the population. Administrative counts give us a partial picture of the systems they are assumed to inform. The number taken into care, is, like the number sentenced to prison by the Court, a measure of flows into the system. The number in care, as with the number imprisoned, is the stock of people in the care of those institutions at key dates, usually the end of the quarter. The third count, of exits from care is harder to find. Up to 2017, MSD published administrative counts of those in care as its prime measure, but since 2017 Oranga Tamariki has published those coming into care. All three measures, of entries, those currently placed in care and exits are needed to understand the operation of child welfare systems.

Analysis of recent trends in Administrative Counts

8. By 2019, the annual rate of tamariki Māori entering the care and protection of the child welfare agency had halved compared to 2001. However, the rate with which tamariki Māori were held in the care and protection of the child welfare agency was 2.5 times greater than that of 2001. These two diverse trends occurred because the rate of leaving State care did not fall in the way the rate of entry did. Non-Māori trends saw a larger fall between 2001 and 2019, so that the chance of non-Māori children entering care by 2019 was just one-third of that in 2001. For non-Māori children the chances of being in care in 2018 were similar in 2001, although for a period between 2001 and 2019 there was a significant increase that had reversed by 2018.
9. In regard to the ethnic mix of children who entered into the care and protection of the child welfare agency each fiscal year (ending 30 June), there is a decline in Māori children entering care, and a greater decline in the number of Pākehā children. This has led to the situation where although the incidence of Māori children in care is declining, Māori disproportionality is increasing, as is disparity between Māori and Pākehā.

Uses and limits of measures of disproportionality

10. Disproportionality has been embedded in the child welfare system since at least the 1940s. There are signs that acceptance of this disproportionality has become embedded in child welfare and the justice systems. Disproportionality measures

provide no information about whether the incidence of care and protection should be of concern.

11. The large number of Māori children who were placed in care during the 1960s until the late 1980s may have been more important than disproportionality in galvanising the most significant political changes in the late 1980s. Over that period, high levels of all groups in the population were being placed in institutions, including child welfare and psychiatric institutions as well as borstals. The sheer scale of the Māori children who were institutionalised was a key element of Puaote-Atatu of 1988, which is perhaps why that report led to massive change on a scale we have not seen before or since, and why that report remains such a fundamental document. Changes following that report saw the total numbers of children who were wards of the State fall from 7,214 in 1977; to 6,588 in 1982; to 5,421 in 1987; and then to 3,287 in 1989. While some of this decline reflected the fall in birth that had begun before 1970, the decline in the last two years would have required political direction.

The importance of the level of incidence experienced by distinct groups

12. By relating the counts of those placed in institutions to the relevant population group, judgments can be made separately for Māori and non-Māori as to whether their connections with such institutions has reached a critical point for that group. This would require understanding of the impact on whānau, life course outcomes, systemic determinants of recidivism, and cohort versus individual behavioral consequences.¹
13. But measures of disproportionality, as with administrative counts, need to be seen in a wider context and they cannot in themselves adequately summarise what is important to know about the child welfare system. **As long as administrative counts are presented as prime sources of accountability, the wider concerns about the legitimacy of the child welfare system will not be taken account of, except through occasional reviews and challenges.**

Legitimacy and accountability

14. Respective Children's Commissioners have over the years acknowledged something that the child welfare agencies themselves, as overseers of the child welfare system, have been less ready to accept, namely, that it is undoubtedly the hardest task the State will ever take on - to replace a parent. There will be many

¹ Should the levels of child welfare involvement with Maori also be experienced by the population at large, then judgments about moral and fiscal failure as described by the Hon Sir Bill English about the prison system generally can be a matter for general reflection.

times when in retrospect the state has left children worse by becoming involved, and times when a life has been saved. With such a task, where outcomes will not always be positive, not only the staff of Oranga Tamariki but the public at large have to “own” what it does and that it is done.

15. Legitimacy is more difficult to demonstrate than accountability. For public service departments, accountability is dominated by a focus on cost efficiency, with less focus on the way citizens are dealt with, and to what effect. Legitimacy requires trustworthiness to be demonstrated, particularly by independent third parties. This includes the science behind practice, the processes for continuous improvement, and the accreditation and oversight of key agents. Across government, all agencies have obligations as part of the official statistics system, and I have identified many shortcomings in Oranga Tamariki in this regard. I am concerned that Oranga Tamariki has chosen not to adopt the same ethnicity classification as the rest of government, and this will inevitably obscure identifying any patterns in the connections between child welfare and the wider justice system that require using official statistics of other agencies. Since my paper was published, some may have been rectified. The interaction between the Family Court and Oranga Tamariki is not particularly transparent, so the role that the Court plays is not clear in challenging operational decisions inside Oranga Tamariki. The thoughtful review by the Children’s Commissioner unfortunately does not address this element in the accountability of Oranga Tamariki.
16. The Children’s Commissioner in his first report was able to publish a range of statistics that one might have considered well within the reach of Oranga Tamariki and that could have been produced many months before if there had been a clear focus on them.

Mothers have become missing in child welfare

17. The second report by the Children’s Commissioner has raised the invisibility in reporting by Oranga Tamariki of mothers, and whānau and families more generally. Seeing children in the context of their family was fundamental to the huge reduction in the number of children in care that occurred from the mid-1980s for nearly twenty years. Whatever the reason that children leave the care of their mothers, whether it be by the large scale adoptions that took place for some 30 years up to the 1970s, or the enforced taking into care now of babies from their mothers, the influence on the mental health of women is known to be significant. The absence of reporting on the characteristics of mothers is a serious omission, and this obscures any need for

concern about mothers. Dr John Angus, after retiring as Children's Commissioner and a distinguished career in social services, observed in a submission that:

“Most social services are delivered by family members and informal community groups, not by government, or by the formalised FP and NFP NGO sector. One needs only to reflect on the extent to which services to restore health depend on individuals, partners, family members and friends. Similarly responses to deal with the psychological harm caused by violence primarily come from family and friends. And at least twice as much intervention and day to day care of children in need of care and protection is provided by extended family members, often acting independently of Child Youth and Family, than by state provision.”

18. Another Children's Commissioner, Dr Russell Wills, noted in the 2015 annual report that he was surprised to find that the child welfare agencies had no idea where almost all State wards went to once they left their care.
19. The Children's Commissioner noted that we do not know the positive benefits of intervention, and perhaps more importantly, for the organisation to properly demonstrate its legitimacy, how it learns about individual and group outcomes that cause it to continually adapt its practices. The long-term consequences are clearly identified when following through the later experiences of the cohorts who became state wards during the twenty year period up to the late 1980s. The intergenerational effects show up in the OCC reporting that forty-eight percent of the pregnant women in 2019 for whom the state decided during pregnancy to remove their pēpi Māori after birth, had been in state custody themselves, compared with 33 percent of non-Māori. Both these statistics are of concern.

Limitations of the research and statistics of the State

20. The common rules, obligations and tests of eligibility that are being applied to Māori have been based on analysis and knowledge dominated by the characteristics generally measured and modelled for Pākehā, because of the limited scale of Māori specific statistical sources. In the application of policies developed in this way, this ethnic bias inevitably leads to parts of the Māori population often being systematically identified and treated as outliers in most sectors, rather than as a community whose distinct characteristics need to be measured and reliably accounted for. A failure to account for, measure and treat as distinct the differences from culture, social and demographic structures remains, as does ignorance of the effect of the pathways experienced by earlier generations of Māori. Where there are rules that bring mothers to the attention of the State's childcare and protection system, they need to be regularly audited by relevant professionals including those

with deep knowledge of whānau to identify whether they are potential sources of systemic bias against Māori.

A demographer's footnote

21. For any indigenous population where connections are based on whakapapa, its fertility and the development of its children are central to survival as a people.

Dated at Wellington this 29th day of July 2020

The image shows three handwritten signatures in blue ink. From left to right: 'Tom Bennion', a stylized signature for 'Emma Whiley', and 'Genevieve Davidson'. The signatures are written on a light-colored background.

Tom Bennion / Emma Whiley / Genevieve Davidson
Counsel for Wai 1911 and Wai 2408