



## Submission on possible changes to the Family Justice system

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## INTRODUCTION

Te Pūtahitanga o Te Waipounamu welcomes the opportunity to comment on possible changes to the **Family Justice system** and the ideas for reform.

Whānau Ora is based on the belief that a healthy whānau is not reliant on indicators of deprivation but is instead driven by a belief in their own inherent wealth. Whānau wellbeing is intimately tied to the concepts of caring – the application of manaakitanga, wairuatanga, and ukaipotanga.

Whānau Ora recognises the collective strength and capability of whānau to achieve better outcomes in areas such as health, education, housing, justice, environment, employment and income levels. Our relationships encourage inter-dependence; we know that our strength comes through all of us taking up our roles and responsibilities to one another.

Whānau Ora Navigators support whānau to be self-determining and navigate whānau to champion their aspirations. Our Whānau Ora Navigators work with whānau to:

- support them through crisis and link them to the appropriate services
- Collaborate, broker services and advocate ensuring their needs are addressed in a holistic way.
- Help develop a step-by step plan to achieve their goals and aspirations.
- Identify and strengthen support networks.
- Reduce any risk of harm to whānau.
- Uplift mana and create opportunities for cultural connectedness.

The Whānau Ora approach is unique because it:

- recognises a collective entity,
- endorses a group capacity for self-determination,
- has an inter-generational dynamic,
- is built on a Māori cultural foundation,
- asserts a positive role for whānau within society and,
- can be applied across a wide range of social and economic sectors.

Te Pūtahitanga o Te Waipounamu is the Whānau Ora Commissioning Agency for the South Island. We respond to whānau innovation, to foster and grow inspirational ideas that are whānau-centred, intergenerational, locally driven, and provide direct impact for whānau to enable independent transformational change.

We represent a legal partnership of Ngā Iwi o Te Waipounamu, the nine iwi of the South Island: Ngāi Tahu, Ngāti Apa ki te Rā To, Ngāti Koata, Ngāti Kuia, Ngāti Rarua, Ngāti Tama, Rangitane o Wairau, Ngāti Toa Rangatira, and Te Atiawa. This unique initiative is the first time, ever, that the iwi has come together for a common cause to trailblaze a new model that reflects the aspirations of ngā iwi as they relate to whānau.

As our name suggests, we reflect the convergence of the rivers of Te Waipounamu, bringing sustenance to the people and reflecting the partnership's founding principle of whanaungatanga.

## GENERAL COMMENTS

The overrepresentation of tamariki Māori in State care continues to increase in Aotearoa with current child protection methods appearing to marginalise the most disadvantaged<sup>1</sup>. For many whānau, the fear and distrust of the welfare and justice system has significant impacts on parenting, on the safety for children, on opportunities to receive assistance and thus containing the ingredients to create another generation of trauma.

The impact of child poverty has short and long-term health, social, economic and cultural outcomes for children and as such, their whānau. The urgency of survival issues for whānau is ongoing with rising concerns of food and fuel poverty; self-harm and suicide ideation; homelessness; and harm caused by alcohol and drug abuse. These are issues which urgently require a meaningful cross-sectoral approach. We include portfolios such as Child Poverty Reduction, Regional Economic Development, and Crown/Māori Relations among those which should be working towards shared outcomes with Whānau Ora in Te Waipounamu. Cross-sector social investment would also support the alleviation of geographic isolation, a persistent issue for whānau in Te Waipounamu.

Te Pūtahitanga o Te Waipounamu supports the case for changes to **Strengthening family justice services** to reduce the harmful effects of parental conflict and adversarial legal processes on children, their parents and whānau.

We acknowledge the 2014 reforms introduced a system of 'in-court' and 'out-of-court' processes. To keep people out of court, the changes meant those who were unable to agree on arrangements for their children had to take part in a parenting programme and mediation before they could apply to the court, unless their situation was urgent. We note the 2014 changes also severely limited parties' access to legal advice and representation. The expectation was that, by requiring all but those who filed 'without notice' applications to first try out-of-court services, more people would be able to resolve their issues out of court, delays would be reduced, and children's wellbeing better secured. Sadly, we know this had not been the case.

Te Pūtahitanga o Te Waipounamu supports a process that is in the best interests of children if arrangements for their care and/or decisions about them can be decided without having to go to court, which is inherently adversarial.

A whānau hui is one of the most effective tikanga-based practices to resolve issues out of Court. A whānau hui is not defined or constrained by the law and it can be convened and conducted in any manner decided by the whānau. It is an effective way of exploring options, airing possibilities, finding solutions and building relationships. A whānau hui allows the whānau to retain / regain some control of the decision-making process.

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<sup>1</sup> Two thirds of the current population of children in state care (6300 children) are Māori

We note the findings of the consultation document “**Strengthening the family justice system**” released by the Independent Panel examined the 2014 Family Justice reforms and reported

- even greater delays than occurred before the 2014 reforms,
- limited participation by children,
- monocultural services, processes and procedures,
- failure to recognise te Ao Māori or incorporate tikanga in procedures and processes
- a ‘one size’ fits all model, inflexible and unresponsive to diversity and disabilities,
- lacking in accessible, quality information and of course
- the impact of Family Court and related services that deal with family violence and its effect on children and their whānau.

Advocating on behalf of whānau and their binding relationship with iwi, Te Pūtahitanga o Te Waipounamu supports the founding purpose of **Strengthening the Family Justice system** to the extent that we see the consultation document as contingent to improving the quality and health of the relationship between whānau Māori and the Crown. In this instance, we are particularly supportive of the measures to provide a greater voice for whānau to be heard within the Justice system and achieving equity and equality. To assist in achieving equity and equality, we believe that whānau need to be at the centre of the **Strengthening the Family Justice system**.

On the basis of the *kaupapa tuku iho* which inform the substance of everything we do, our comprehension of good relationships with Māori account for principles like mana, manaakitanga, rangatiratanga, whanaungatanga, and ūkaipō. These principles are not necessarily exclusive in their application to Māori, however, they do articulate a Māori way of conceptualising and facilitating good relationships. Whānau Ora in Te Waipounamu provides a successful model for Crown/Māori relations based on Māori ways.

In 1988, *Puao-te-ata-tu - the Report on the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare* noted that “*providing leadership and programmes which help develop a society in which the values of all groups are of central importance to its enhancement.*” The same framework also noted the incorporation of “*the values, cultures and beliefs of the Maori people in all policies developed for the future of New Zealand*” (pg. 9).

Te Pūtahitanga o Te Waipounamu supports the notion of the Family Justice Service being described as a korowai to the extent that it symbolises the empowering and protective roles of family justice, which has many strands woven together to represent the uniqueness, diversity, interconnectedness and interdependence of the service.

While Te Pūtahitanga o Te Waipounamu supports a system that provides access to legal advice and representation at any stage, provides for Family Dispute Resolution, simplifies court processes, provides quality, accessible information including for children and young people, **all of these services must be cognisant and meet the needs of victims, families and whānau**. Any system must also drive the right behaviours, and allow for better participation of children, young people and their whānau. However, any guidance must implement Māori

ways of facilitating good relationships and spread the utilisation of Māori relationship management tools through government. Indeed, such a purpose is conducive to the realisation of our own vision, that whānau are able to fulfil their dreams and aspirations, are culturally connected, thriving and contributing members of their communities.

Te Pūtahitanga o Te Waipounamu supports an emphasis on working across government to improve opportunities to strengthen the Family Justice Service. The proposed **Strengthening the family justice system** has an impact on the living standards and well-being of children. However, the wellbeing of the child must also be seen in the context of the well-being of the whānau.

The emphasis on the centrality of the child within the context of whānau is not a new phenomenon. *Puao-te-ata-tu - the Report on the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare* also noted that “legislation which recognises social, cultural and economic values of all cultural groups and especially Maori people” be endorsed (pg. 9). The same framework supported the development of “strategies and initiatives which harness the potential of all of its people, and especially Maori people, to advance.” The importance of the place of the child in Māori society and its relationship with whānau, hapū, iwi structures was also emphasised (pg. 7).

The preliminary report of **Whakapono: End Child Poverty in Māori Whānau (2017)** further reinforced the link between the wellbeing of tamariki Māori and the wellbeing of their whānau. Lasting solutions to the effects of poverty among all tamariki is needed if Aotearoa is to address the intergenerational trauma that successive generations have endured because of poverty.

Te Pūtahitanga o Te Waipounamu also supports the development of an Oranga Tamariki Action Plan (Section 8) to improve the wellbeing of specific groups of at-risk children but also acknowledges that the place of the child in Māori society and its relationship with whānau, hapū, iwi structures (pg. 7) must be a consideration of any strategy that impacts on the wellbeing of specific groups of at-risk children.

Caring for children and young people in a truly whānau-centric way means supporting children and young people to fully participate where they can, with the support of whānau around them. Such participation is vital at times of making key decisions, particularly at critical times such as Family Court reviews and FGCs. The views of children in relation to their circumstances in the family court, were well canvassed in the 2015 report, **Investing in New Zealand’s children**.

“Young people told us that they did not always understand what was happening to them, and that their views were not always sought at critical decision-making points, like FGCs or when their plans were reviewed in the Family Court. The inability to have a say or to be “heard” left young people feeling confused, upset, and sometimes angry. Existing organisational practices and systems do not give priority to listening to children and young people”. (2015, p53)

The right to wellbeing is a fundamental and universal human right. How the right to wellbeing is delivered is considered in relation to the availability, accessibility, acceptability

and quality of other strategies, services and plans but must also include a Māori perspective and conception of wellbeing as developed by them.

The right to wellbeing encompasses not just the absence of disease or infirmity but also includes physical, mental and social wellbeing. Wellbeing also includes access to both timely and appropriate care as well as the underlying social and economic determinants of health such as conditions of work, adequate food and shelter and access to appropriate health and justice services. The consultation document **Strengthening the family justice system** must ensure it addresses the wellbeing of all those involved in the Family Court and related services to reduce the harmful effects of parental conflict and adversarial legal processes.

### **Cultural Identity and Wellbeing**

The Ministry of Social Development has identified the connection between cultural identity and wellbeing as an “important contributor to people’s wellbeing” (Ministry for Social Development, 2016, p.175). The Ministry notes that an established cultural identity has also been linked with positive outcomes in areas such as health and education and provides access to social networks which assist in breaking down barriers and building trust.

Dalziel, Saunders, Te Hemi, Savage and Hynds (2018) identify the importance of cultural identity for wellbeing in *Cultural Identity and Wellbeing* (2018). The research aims to make progress on defining and measuring cultural identity and its impact on enhanced wellbeing. The research will consider five elements that Dalziel et al. consider important aspects of cultural identity. These elements include:

1. **Cultural intergenerational connections** – connections to cultural value, ancestors and their descendants. For Māori, this would be *whakapapa*.
2. **Cultural efficacy** – The extent to which a person or whānau is knowledgeable and confident in their inherited values. In a Māori cultural setting, this is *mana*.
3. **Cultural sense of place** – This is the extent to which a person or whānau is comfortable with their place in the cosmos. In a Māori cultural setting, this setting is called *tūrangawaewae* or place to stand.
4. **Cultural relational agency** – This is the extent a person or whānau exercise their agency in relation to others to participate in the ongoing transformation of cultural values and practices. Māori would call this *rangatiratanga*.
5. **Cultural expression** – the extent a person or whānau is capable of expressing cultural values and practices in their lived experience. For Māori, this would be *tikanga*.

This list is not meant to be definitive but rather represents a tentative first step in a collaborative research to understand the value of cultural identity to the wellbeing of persons, whānau, communities and the country.

What the research does identify is the importance of cultural identity (as noted by the five elements). The policies and practices of the department should aim to demonstrate an understanding of, and champion, these elements including cultural competency in the development, application and monitoring of the policies and practices of the department at every level of the organisation. This also includes the tools, systems and processes required to deliver and monitor the measurable outcomes that impact on the wellbeing of tamariki Māori and young persons who come

to the attention of the department. Enabling settings in this layer will allow this to occur. Enabling settings should aim to operationalise the policies and practices and include the tools, systems and processes required to deliver and monitor the measurable outcomes.

The importance of senior leadership of the Justice sector and the leadership of other agencies to demonstrate an understanding of, and the importance of cultural identity (as noted by the five elements), and champion cultural competency cannot be emphasised enough.

Te Pūtahitanga o Te Waipounamu also contend that all who engage with tamariki Māori and their whānau must demonstrate an understanding of and the importance of cultural identity and champion, cultural competency. We note for example, the references to sections 133 and 136 can have a huge impact when engaging with whānau Māori. It is not enough to leave the decisions that have a lasting impact on whānau to individuals who may not have an understanding of the importance of cultural identity and cultural competency and how to operationalise these concepts. Properly understanding Māori whānau and their communities is also essential to addressing institutional racism and ‘unconscious bias that may also contribute to institutional racism.

Such issues recently came to light in the context of the Whānau Ora Review. Tipu Matoro ki te Ao: Final Report to the Minister for Whānau Ora (2018) reflected on a wide range of concerns associated with a lack of buy-in and uptake from government agencies in focusing on whānau wellbeing.

*“This ranged from a lack of collaboration with Commissioning Agencies planning processes and a lack of participation in responding to whānau needs, including needs that should properly be met by those government agencies, through to a lack of co-investment by other agencies in Whānau Ora” (2018, p55).*

And

*“We asked government agencies about the barriers to uptake of Whānau Ora and applying more whānau-centred approaches more generally. Their responses tended to be about culture and perceptions within the agency and across government. Identified barriers included:*

- *The Terrace culture, including a lack of trust in innovation and systemic racism and*
- *The singular focus that agencies tend to take, characterised by a siloed approach to government service delivery, a lack of integrated leadership and a continued focus on individual outcomes. (pp 55-56)*

## QUESTIONS AS NOTED IN THE CONSULTATION DOCUMENT STRENGTHENING THE FAMILY JUSTICE SYSTEM

### Focus on Children

#### 1. What should be included in a comprehensive safety checklist?

- Emotional well-being section
- Spiritual well-being section
- Physical well-being section
- Cultural safety section

Insights from the experiences of tamariki Māori and their whānau and enabling best practice are invaluable and can be useful when developing a comprehensive safety checklist as they would know first-hand what the challenges are.

Deliberation of the responsibilities of other legislation where the safety of a child is a consideration may also be useful when considering one's own area of responsibilities as aspects of one area may also be relevant to another. For example, currently under the proposed section 7AA of the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017, the section sets out the duties of the Chief Executive in relation to Te Tiriti o Waitangi.

The Chief Executive must ensure that—

- (a) the policies and practices of the department that impact on the well-being of children and young persons have the objective of reducing disparities by setting measurable outcomes for Māori children and young persons who come to the attention of the department:
- (b) the 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:

Te Pūtahitanga o Te Waipounamu recognises the role and benefit that whānau, hapū, iwi and Māori organisations such as Whānau Ora Commissioning agencies can have in the development of the policies and practices that impact on the well-being of children and young persons who come to the attention of the Justice department. Many of the above aspects are important to consider when developing a checklist. However, rather than just looking at what should be included in a checklist, consideration should also be given as to who is advocating for aspects of the checklist and the impact that the criteria would have on the child, their whānau, hapū, iwi and the wider community.

#### Conducting a Child Impact analysis may assist.

- **Child Impact Analysis** - Conducting a child impact analysis at every stage of to ensure children's rights are being upheld, impact on children is well understood, children have had their voices heard, and there are no unintended consequences. Such an analysis should of course, recognise the context of a child within a whānau, hapū or iwi. Every child impact analysis should at a minimum ask:
  - How will this impact on children?
  - Will there be differential impacts?



- What do children and young people think?
- A cultural analysis is also part of this. This could be in the form of a Whānau Ora Assessment which is strengths-based and drives solutions as identified and led by whānau.

The Ministry of Social Development (MSD) has a Child Impact Analysis Tool which could be used for this purpose including:

- **Tamariki and young person's participation**- Embedding mechanisms at every stage to enable children to participate and have their voices heard. Ensuring ongoing engagement with children through the design, implementation, monitoring and evaluation of the safety assessment process. Ensuring processes are in place to incorporate children's views into practices and policies.
- **Investment, budget setting and monitoring** - Transparently and regularly measuring and tracking resource allocation and spending on children's wellbeing as part of the safety assessment process. Assessing the impact of investments for children in line with the principles and provisions of the policies and legislation
- **Resourcing communities** - Ensuring communities are adequately resourced and have the capability and capacity to support children's wellbeing. Whānau need to be supported so that tamariki can return home to their families as opposed to staying in state care.
- **Training and supports** - Ensuring the people and organisations who are key to the success of Section 7AA receive children's rights and wellbeing training and training in cultural competency to support and enable the successful application and implementation of Section 7AA.

There also needs to be adequate resourcing to build the Māori workforce and capability in the sector and where a strategic relationship has been entered into with iwi, this relationship needs to be resourced to build capacity.

- **Data** - Ensuring the collection, storage and sharing of information about children related to the justice system is consistent with privacy and information rights and the views and best interests of all children.  
Additionally, there needs to be clear and transparent policy, protocols and processes on how Oranga Tamariki regularly share and exchange data should they enter into any strategic partnership with iwi about many of their tamariki in care, who they are and where they are located.
- **Monitoring and Evaluation** - Designing and implementing a monitoring and evaluation framework so that progress towards the desired outcomes and vision of section 7AA is tracked and monitored over time. Monitoring should be iterative and aim to capture and integrate lessons learned along the way. Monitoring should also be inclusive of all stakeholders, particularly children and young people, and their families and whānau, hapū, iwi and Māori communities.
- **Oranga Ngākau** – Is an indigenous model for assessing whānau impact

## **2. What information should be available to the court to assess children's safety and in what circumstances?**

- Information about kaupapa Māori services and programmes.
- A Whānau Ora plan because we see the child in the context of whānau. The plan should contain the protective factors of whānau, culture, and identity to impact and absorb the effects of trauma.
- Co-construct case files so whānau can control the narration of their journey. It is not just about someone else reporting on the child or the whānau.
- How the tamariki is coping physically, emotionally and spiritually
- If a child has been removed from a whānau by Oranga Tamariki they must show comprehensive case notes of what the Social Worker is doing to locate whakapapa whānau to take care of the tamariki.

Protective factors are conditions or attributes in whānau that, when present, mitigate or eliminate risk and increase the health and well-being of children and families. Where protective factors are developed then whānau are likely to be able to increase their health, well-being and resilience. We might describe protective factors as personal and/or cultural; as demonstrated in the following examples.

### **Personal Protective Factors**

- Access to health care and social services
- Access to support and help
- Self-esteem, identity and a sense of belonging
- Having a positive outlook on life; having hope
- Positive relationships and good social support
- Supportive whānau, hapū and iwi connections
- Positive community support
- Skills in problem solving, conflict resolution and positive ways to deal with challenges
- Having a sense of responsibility for others

Cultural/spiritual/religious beliefs that support self-preservation.

### **Culturally derived Protective Factors**

- Strengthening of cultural identity
- Access to cultural resources
- Reconnect and maintain those connections to whānau, hapū iwi, and communities
- Use outcome measures appropriate to the Māori world view and experiences.

**3. What role should specialist family violence workers have in the Family Court? Should there be separate support workers for adults and children?**

- Yes, the positive side of having separate workers for children would outweigh the disadvantages. A child centred family violence worker would listen to the child's voice and advocate for its inclusion at all stage of the court process. Some workers relate particularly well to children, and have special resources and techniques designed to help children to speak their truth.
- The main disadvantage of separate workers for children and adults is that it can be time-consuming and processes for reaching overall decisions need to be clear.
- The word "support worker" suggests the family violence workers will be tū pono and tautoko tamariki and their whānau – not judge them.
- The role is family violence workers is to ensure that they should:
  - a) establish a genuine connection/relationship with the tamariki and whānau before advocating for them in the Family Group Conference
  - b) help tamariki and whānau understand Family Court terminology/language/processes
  - c) walk alongside tamariki and whānau in the lead up to Family Court and continue to walk alongside them until they have fully exited the Family Court system
  - d) influence the decision-making being made by the Judge based on discussions had or statements made to the family violence workers by tamariki and whānau
  - e) Statements made by the family violence workers should take preferential status over the views of an Oranga Tamariki Social Worker. The rationale for this is that we believe the physical safety of the child to be protected from violence and harm is the immediate priority. We also believe that the whānau-centred lens that is reflected in the new roles of the family violence workers takes into consideration the whole whānau, and that is a positive step. Conversely the statutory role of the social worker is restricted to the focus on the child.
- A whole of family approach is vital when working with Māori whānau. Rather than have separate workers why not establish one family violence worker team per whānau. The team could consist of the family violence worker, a younger person (rangatahi/youth support worker) and a Whānau Ora Connector that provides the gateway to a Whānau Ora Navigator. Working as a family violence worker team would help strengthen the connection with tamariki and whānau who are going through the Family Court system.

**4. Do you have any other suggestions for more child-responsive court processes or services?**

The child's voice needs to be integrated into court processes and process of social service agencies and Oranga Tamariki.

**The Family Dispute Resolution process could be strengthened by:**

- Ensuring the provision of a child inclusion specialist is part of the Family Dispute Resolution mediation service specifications. The role of this specialist is to independently speak with the child and ensure their viewpoints remain the focus of the mediation. Our understanding is that some providers currently utilise a child inclusion specialist – others do not.
- Offering group support or mentoring to tamariki experiencing a parental separation would also be helpful.
- Adopt a Whānau Ora approach. Provide an opportunity for the Family Court, via the Family violence worker, to engage better with Māori communities and local marae. Whānau Ora is the

ultimate outcome which will be achieved when whānau feel empowered, are self-determining and active in achieving their own solutions. The family violence worker's role could be integral to this outcome – if the judge is open to take on this approach for better outcomes.

## **Te Ao Māori in the Family Court**

### **5. Should obligations be placed on the Ministry and/ or the Government to improve family justice outcomes for Māori? What would these obligations be?**

Te Pūtahitanga o Te Waipounamu believes that all governments and their agencies should have an obligation to improve family justice outcomes for Māori.

The right to justice is a fundamental and universal human right. How the right to justice (including its services) is delivered is considered in relation to the availability, accessibility, acceptability and quality of other strategies, services and plans but must also include a Māori perspective and conception of wellbeing as developed by them.

- Address institutional racism.
- Actively take into account and apply Te Tiriti o Waitangi for all cases being presented in the Family Court

### **What would these obligations be?**

#### **6. How could the Ministry of Justice or the Government partner with hapū, iwi or Māori organisations to deliver services?** Under the proposed section 7AA of the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017, the section sets out the duties of the Chief Executive in relation to Te Tiriti o Waitangi. The section notes that the Chief Executive must ensure that—

- (c) the department seeks to develop strategic partnerships with iwi and Māori organisations, including iwi authorities, in order to—
  - (i) provide opportunities to, and invite innovative proposals from, those organisations to improve outcomes for Māori children, young persons, and their whānau who come to the attention of the department:
  - (ii) set expectations and targets to improve outcomes for Māori children and young persons who come to the attention of the department:
  - (iii) enable the robust, regular, and genuine exchange of information between the department and those organisations:
  - (iv) provide opportunities for the chief executive to delegate functions under this Act or regulations made under this Act to appropriately qualified people within those organisations:
  - (v) provide, and regularly review, guidance to persons discharging functions under this Act to support cultural competency as a best-practice feature of the department's workforce:
  - (vi) agree on any action both or all parties consider is appropriate.

These aspects could provide a similar framework for the first step towards a partnership with hapū and iwi or Māori organisations to deliver services.

**7. How would you incorporate tikanga Māori into the Family Court?**

Tikanga can be incorporated at all levels of the Family Court process but it would require experts who could identify what and when it is appropriate. Perhaps a working group could be created to look at this aspect and look at other areas where tikanga Māori is already practiced. It is not enough to have a karakia at the beginning and hope that meets the notion of tikanga. There is a continuing need to maintain and adapt tikanga in a dynamic process. Perhaps it is too soon to ask how but rather what processes should be used and then developed to use in the courts. Any working party must contain experts in tikanga and the court processes to give this legitimacy.

**8. Do you have any other suggestions to improve the Family Justice Service for Māori, including any comment on the examples provided above?**

Tikanga Māori should not be seen as fixed from time to time immemorial but as based on a continuing review of fundamental principles.. Tikanga is not just rituals but customary law.

**Quality Accessible Information**

**9. What information do you think would help service providers, community organisations, lawyers and family justice professionals to achieve a joined-up approach to the Family Justice Service?**

- An up to date directory of kaupapa Māori providers, services and programmes including Whānau Ora navigators will assist in achieving greater cohesion and collaboration.
- Whānau Ora training and workforce development.

**Counselling and therapeutic intervention**

**10. Would the three proposed types of counselling meet parties' needs, or are there other gaps in the counselling services that need to be filled? For example, should there be counselling available to children?**

- All service providers should have access to pathways of healing
- All whānau should have the ability to access pathways of healing!

It is important that there is free counselling /therapeutic interventions available for couples who wish to try and work through challenges and reconcile their differences. Such counselling can strengthen whānau and have lifelong benefits for all involved, including tamariki who may not suffer through a parental separation. Such early interventions could also avoid the need for a range of other state funded intervention including those discussed in this review. The return an investment for such spending would greatly outweigh the costs.

Te Pūtahitanga O te Waipounamu support the proposal for the three types of counselling. We further recommend:

- A fourth type of therapeutic intervention is freely available to parents who wish to explore it if they can navigate through challenges and remain parenting together, and
- Whānau should be able to self-refer to a provider of their own choice.

**11. Are Parenting Through Separation/Family Dispute Resolution suppliers, Family Justice Service Coordinators and Judges best placed to refer people to counselling? Are there any other service providers who should be able to refer to counselling or should people be able to refer themselves?**

People should be able to self-refer to counselling, and counselling should also be available for couples who wish to see if they can work through challenges and stay together. The loss of six free sessions for couples experiencing difficulties to work through their problems has been an enormous loss to our community. The dissolution of Relationships Aotearoa compounded this loss. A caring family justice and support system needs to support whānau who wish to parent together well, as well as supporting separating parents to separate well.

**12. Should confidentiality be waived when parties are directed by the court to therapeutic intervention, in what circumstances and about what matters?**

No confidentiality should ever be waived.

**Parenting through separation**

**13. Do you agree that there should be an expectation on parties to attend PTS, rather than having it as a compulsory step for everyone?**

Parenting Through Separation should continue to be compulsory as it a key way of highlighting the need for parents to put their children first when they are separating. It gives parents practical skills and strategies for managing through difficult times and offers them pathways for accessing further support should they need it. Parents learn from each other and get to hear different viewpoints. At times parents form informal support networks. Parents feel better prepared for the future after Parenting Through Separation Parents feedback (via survey results) on Parenting Through Separation is usually very positive – much more so than feedback from the mediation component of Family Dispute Resolution. Even when parents do not want to attend Parenting Through Separation initially, results show their experience is almost invariably positive. This component of Family Dispute Resolution should continue to be compulsory.

**14. If Parenting Through Separation is not mandatory, how should this expectation of attendance be managed and achieved?**

If it is not compulsory a large range of mātua (parents) will not go. This will disadvantage tamariki and make the mediation component of Family Dispute Resolution more difficult.

Te Pūtahitanga o Te Waipounamu support the proposals

- Parties are expected to attend PTS if they intend to engage with Family Dispute Resolution or make an application to the Family Court
- A review of Parenting Through Separation is undertaken
- A review of Parenting Through Separation takes place every three years

Te Pūtahitanga o Te Waipounamu recommend that

- The review compares how effective the services were for people of different ethnicities
- Routine reporting by Parenting Through Separation providers should incorporate results on how culturally appropriate the Parenting Through Separation course was.

## Family Dispute Resolution (FDR)

- 15. Do you agree with the idea of a rebuttable presumption? If so, how might it be worded to make sure that parties take part in Family Dispute Resolution unless there are compelling reasons not to?**

There is a Māori Resolution Disputes model that is already applied in other courts (Environment Court uses Hearing Commissioners which involve Māori and similar processes could be developed for the Family Dispute Resolution).

- 16. Do we need stronger obligations on family justice professionals to promote Family Dispute Resolution and conciliatory processes generally? Yes. See above.**

- 17. What could a streamlined process for court referrals to Family Dispute Resolution look like?**

Not enough information to comment.

## Legal advice and representation

- 18. Is there a place for more accessible provision of funded legal advice for resolution of parenting disputes outside of court proceedings? What would the key elements of this service be and how could it be achieved? For example: Should it be part of a legal aid grant, or could there be an enhanced role of Family Legal Advice Service<sup>1</sup> (giving a person initial information and advice on the out-of-court processes), including the creation of a solicitor-client relationship?**

Absolutely. The financial challenges for young whānau negate their ability to access legal advice and support particularly if they have already used up their legal aid provisions.

## Case tracks and conferences

- 19. How do you think we could improve the efficiency of court processes?**

Make them more whānau-centred and whānau friendly.

## Without notice applications

- 20. Will reinstating legal representation be enough to reduce the number of without notice applications? No**

**Or would other interventions be required? Not sure**

**For example, are sanctions required for unnecessary without notice applications? If so, what sanctions would be appropriate?**

- 21. Do you think there is value in clarifying that parenting orders made without notice can be rescinded?**

These are definitely areas of concern and would ask the legal fraternity to work closely with agencies like Te Pūtahitanga o Te Waipounamu to assist in this area.

## Triaging

- 22. How best should integrated assessment, screening and triaging be implemented? What other measures would you like to see implemented in order to improve the interconnection of the Family Justice Service?**

We could incorporate a Whānau Ora role to improve the interconnection of the Family Justice Service to embed the whānau-centred, whānau-led approach. We have developed this capacity in the family violence sector with the Police.

### Complex cases

**23. What other powers do you think might be helpful to enable judges to better manage complex cases?**

Judges should have the power to sit in a cultural setting such as a marae setting to conduct a hearing or other appropriate processes of the court.

**24. What types of therapeutic intervention would be useful in complex cases? For example, should a judge have the power to direct a party for psychological or psychiatric assessment or alcohol and other drug assessment?**

Yes, if it supports the wellbeing of the whānau but must incorporate a Whānau Ora Plan and the psychological or psychiatric assessment carried out must be culturally assessed.

### Cultural Information in court

**25. What could be done to encourage lawyers and judges to make better use of s133 cultural reports? For example, should there be a different threshold for cultural reports? If yes, what would be an appropriate threshold?**

The cultural report should be compulsorily undertaken particularly where a Māori or Pacific child is concerned and should be a compulsory component of the medical or psychologist report.

Currently under the proposed section 7AA of the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017, the section sets out the duties of the Chief Executive in relation to Te Tiriti o Waitangi:

- that in recognition of, and providing a practical commitment to, the principles of Te Tiriti o Waitangi, this is an opportunity to embed the rights and interests that all tamariki and their whānau are entitled to;
- that the chief executive must ensure that—
  - (d) the policies and practices of the department that impact on the well-being of children and young persons have the objective of reducing disparities by setting measurable outcomes for Māori children and young persons who come to the attention of the department:
  - (e) the 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:
  - (f) the department seeks to develop strategic partnerships with iwi and Māori organisations, including iwi authorities, in order to—
    - (vii) provide opportunities to, and invite innovative proposals from, those organisations to improve outcomes for Māori children, young persons, and their whānau who come to the attention of the department:
    - (viii) set expectations and targets to improve outcomes for Māori children and young persons who come to the attention of the department:
    - (ix) enable the robust, regular, and genuine exchange of information between the department and those organisations:



- (x) provide opportunities for the chief executive to delegate functions under this Act or regulations made under this Act to appropriately qualified people within those organisations:
- (xi) provide, and regularly review, guidance to persons discharging functions under this Act to support cultural competency as a best-practice feature of the department's workforce:
- (xii) agree on any action both or all parties consider is appropriate.

**26. Do you think greater use of section 136 of the Care of Children Act 2004 would prove more valuable than presenting cultural information in a report format?** Both aspects (a written and verbal report) are important and should be encouraged to be used. The verbal report can be used to embellish what is already noted and can be tikanga based. Additionally, the tone and feeling that comes with a verbal delivery can be lost in a written report and so both mechanisms are important and should be encouraged. Verbal contributions are important in many societies including Māori who make up a large part of the prison population and s136 should be compulsory.

**If so, what type of information and guidance would be needed to support parties to use section 136?** Guidance in the form of a template that details the information that would be useful to those making the decision about the child should be provided to anyone using s136. Guidance could also include aspects about what the report should contain so that those presenting the report know what should be covered. Identifying who could deliver the cultural background may be useful for those who are being encouraged to use this tool.

**What barriers are there for parties to use section 136 of the Care of Children Act 2004?**

Time may be of the essence and so adjourning proceedings to enable arrangements to be made to hear a person under this section may not be a consideration of the court and this may mean the court may not consider recommending using s136. There may be urgency matters that require a response and so an adjournment may prolong the process despite the importance of hearing a child's cultural background and again adding to the limited use of s136. Lack of cultural competency of those who may allow the opportunity for s136 to take place and therefore there is little encouragement to use this process even though the legislation allows for it. It will be necessary to ensure that any guidance given must provide meaningful information to ensure the wellbeing of those about whom the information is collected so as not to cause further harm or create further challenges to already vulnerable individuals and whānau.

**27. Do you have any other proposals for improving the quantity and quality of cultural information available to the court?**

This list is not meant to be definitive but rather represents a tentative first step in a collaborative research to understand the value of cultural identity to the wellbeing of persons, whānau, communities and the country.

- **Cultural intergenerational connections** – connections to cultural value, ancestors and their descendants. For Māori, this would be *whakapapa*.
- **Cultural efficacy** – The extent to which a person or whānau is knowledgeable and confident in their inherited values. In a Māori cultural setting, this is *mana*.

- **Cultural sense of place** – This is the extent to which a person or whānau is comfortable with their place in the cosmos. In a Māori cultural setting, this setting is called *tūrangawaewae* or place to stand.
- **Cultural relational agency** – This is the extent a person or whānau exercise their agency in relation to others to participate in the ongoing transformation of cultural values and practices. Māori would call this *rangatiratanga*.
- **Cultural expression** – the extent a person or whānau is capable of expressing cultural values and practices in their lived experience. For Māori, this would be *tikanga*.

#### A “new” role – Family Justice Service Coordinator

**28. What do you think of the proposal to create a new role; the Family Justice Service Coordinator (FJSC)?** Yes. However, if new resourcing is to be appropriated towards supporting and strengthening the family justice system, the litmus test must be that it supports existing initiatives which are supporting whānau to keep OUT of the justice system. As an example, we have attached to this submission a copy of our strategy, *Tū Pono: Te Mana Kaha o te Whānau*, which provides a clear articulation of a strategy to support whānau in addressing violence. This could well be worth investigating as a universal approach to support whānau.

#### Whakatika te Huarahi – Harenga Whakamua

Ready the Path and Move Forward - Move Forward Together

##### **Step 1 Whakarite te Huarahi: Preparing the ground**

A time to ready ourself for our feet to stand. Whakarite te Huarahi is about creating safe spaces.

##### **Step 2 Whakatika te Tapu – Whakatika te Mana: Acknowledging the hurt**

The ground has been prepared, we are ready to restore our sacred birthright. A time for kotahitanga, manaaki, aroha, tika, pono and whanaungatanga.

##### **Step 3 Kei roto ko te Kore, Ka Puta te Ao Marama: A Pathway of hope and light**

Creating space for whānau to achieve positive change.

##### **Step 4 Haerenga Whakamua: Taking action**

Whānau are applying strategies for change.

##### **Step 5 Tū Rangatira: Believe in ourselves**

This is the turning point where positive results encourage us to believe in ourselves.

##### **Step 6 Tukunga iho: We are achieving!**

Putting kotahitanga into practice.

### **Step 7 Kuru Pounamu: Treasuring our mokopuna**

Mokopuna are at the forefront of our succession planning of aroha, tika, pono, tohungatanga, aumangea and Whānau Ora.

#### **A “new” role – senior Family Court registrar**

**29. What do you think of the proposal to establish a Senior Family Court Registrar position?**

Yes. Again, if there is new resourcing available, one would hope that indigenous initiatives, and community responses like Tū Pono are also given consideration in the reform of family justice, rather than just adding more roles within the bureaucracy.

**30. What powers do you think Senior Family Court Registrars should have in order to free up judicial time?**

They should have the ability to discern the caseload of Māori cases that are on a waiting list or being delayed. If there are fifty cases with over half of them being Māori, then they should be able to prioritise these cases in order to best respond to the backlog issues

**31. What sorts of competencies should Senior Family Court Registrars have?**

The ideal person specifications would be culturally competent as a priority. By this we do not mean a marae visit undertaken twenty years ago.

#### **Lawyer for Child**

**32. Do you agree with the proposal to introduce new criteria for appointment of lawyer for the child to make sure of the best fit? Yes**

**33. What are the core skills for the role of lawyer for the child, and what training and ongoing professional development do you see as necessary to develop those skills?**

Cultural competency as noted earlier in the submission.

**34. Do you see a role for an additional advocate with child development expertise to work together with the lawyer for the child, to support the child to express their views and make sure they're communicated to the judge? Yes. We can add the role for a cultural development expert to work with the lawyer for the child.**

#### **Psychological reports**

**35. Does the definition of ‘second opinion’ reports need clarifying? Yes**

**36. What improvement do you think could be made to the process for obtaining critique reports?**

The approved list of specialists should be reviewed for cultural competency and tikanga expertise. If the list proves to be lacking, then there should be a drive to train a Māori workforce capable to address the gaps in the Family Court.

**37. At what stage in the court process would psychological reports be most helpful?**

Throughout the whole process especially with a cultural analysis of the psychologist's report

**38. Do you have any other comments about section 133, for example the threshold test for obtaining a report?**

The cultural reports should be compulsory in order to determine the cultural components are included. The threshold test would not be required because they are compulsory.

**Costs**

**39. Do you agree with the Panel's proposal that cost contribution orders are modified? For example, do you think a judge should order a party to contribute to the cost of professionals when making final orders based on the party's behaviour during proceedings? Yes**

**40. Should Family Dispute Resolution Service be fully funded by the government for everybody, or should FDR be free for both parties where one party is eligible for government funding? Should the eligibility threshold be raised?**

Yes, the Family Dispute Resolution Service should be fully funded to ensure access for vulnerable whānau.