

Care and protection of tamariki Māori in the family court system

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Kaupapa Māori models now required to reduce disparities and measure outcomes

The government departmental and judicial system for making decisions about the care and protection of tamariki Māori when their whānau are in crisis needs urgent societal attention. A Kaupapa Māori approach is required to make the best use of the opportunities available in the recently amended legislation to avoid the further systemic undermining of Māori and their whānau.

*E kore au e ngaro, he kākano i ruia mai i Rangiātea
I will never be lost, for I am a seed sown in Rangiātea*

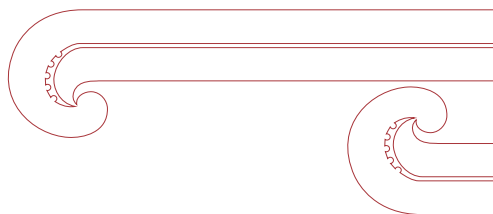
I INTRODUCTION

This paper urges the government and nation to give effect to long-standing Kaupapa Māori models for developing the new required evaluation measures aimed at reducing the disparities for Māori children and young persons who come to the attention of Oranga Tamariki Ministry for Children.

Section 7AA(2)(a) will soon come into force in the recently amended and renamed Oranga Tamariki Act 1989 / Children's and Young People's Well-being Act 1989 due to reform measures in 2017. This provision, which is effective from July 2019, has great potential to change care and protection decision-making for tamariki Māori. Section 7AA(2)(a) will require the chief executive of the newly established Oranga Tamariki Ministry for Children to ensure that the policies and practices of the Ministry have the objective of reducing disparities by setting measurable outcomes for Māori children and young persons who come to its attention.

To realise the opportunity in section 7AA(2)(a), a Kaupapa Māori approach to the Ministry's evaluation is urgently required to positively disrupt the systemic undermining of Māori and their whānau. This paper provides context to enable better understanding of the opportunities now presented in section 7AA(2) by outlining first our work in

Te Ao Māori and then the urgency for reform as illustrated by the statistics. Next, this paper surveys briefly what the Family Court does and the legislation central to this paper before presenting an overview of some key Kaupapa Māori models. A short discussion follows about how some other countries are approaching these issues. The paper concludes with some short notes focused on our suggested approach moving forward.



Ngā Pae o te Māramatanga's Te Arotahi series provides expert thought, research and focus to a specific critical topic area to support discussion, policy and positive action. Te Arotahi will be delivered as an occasional paper series.

‘Māori need to be a part of framing and implementing that opportunity to ensure that the other amendments **do not continue to perpetuate** the current problem that we have with the over-representation of Māori children in state care.’

II TE AO MĀORI

Quince, in her paper entitled “Nourishing the Seed: New Challenges under Oranga Tamariki”, begins with the whakataukī that frames this paper: E kore au e ngaro, he kākano i ruia mai i Rangiatea. She explains that this whakataukī

refers to the whakapapa or genealogical connection of all Māori to the original migration source of Rangiatea in Te Moana-Nui-a-Kiwa – the Pacific Ocean. Like most whakatauki, and much of the Māori language, the proverb also has a metaphorical level of meaning, having regard to the seed as a child or person – of inherent promise – of potential for growth, development and expansion – given the optimum conditions of support and nurture. The seed’s potential is activated by the actions indicated by “ruia” – the planting and establishing of a proper foundation. Ruia therefore represents the link between the seed’s potential and its actualisation. Rangiatea represents not only the source or beginning of the literal lineage of its descendants, but also the wider world – thereby marking both the beginning and the end of a cycle of growth and development. As a whole therefore, the whakatauki expresses pride in Māori identity connected to the past and also hope and confidence in Māori futures.

This proverb has particular resonance for our understanding of the role of those tasked with making decisions about the welfare of Māori children and young people. Key to that role is understanding that, like tamariki Māori, the kakano comes from somewhere, belongs to someone and its past and future is connected to generations that have passed and those that are yet to come. The very identity, health and potential for success of the seed depends upon recognition and affirmation of those connections (Quince, 2018, p. 1).

We strongly endorse these reflections and agree with Ruru (2013) that it is necessary to frame the analysis of the legal system and all family law reform in language that makes sense in Te Ao Māori, specifically whakapapa, whānau and whanaungatanga. This paper heeds this recommendation and begins by firmly placing ourselves in Te Ao Māori.

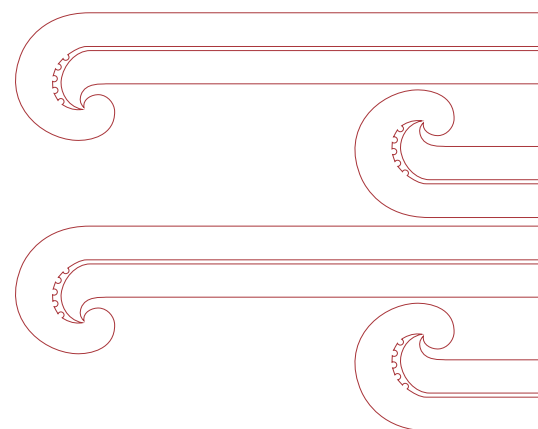
Durie (1998) has noted that whānau serves two broad purposes: it acts as the primary support system for the physical, spiritual and emotional care of Māori, and it provides a sense of belonging and purpose by validating one’s unique identity as Māori.

The concept of whānau is inextricably linked to whakapapa and whanaungatanga. In its literal sense, “whakapapa” means “to lay one thing upon another”, a reference to genealogical relationships which have built up over time,

while “whanaungatanga” describes the responsibilities that bind kin to one another across their network of relationships, which are effectively derived from the common genealogical thread that is whakapapa (Quince, 2018).

Whanaungatanga has been described as a fundamental principle for Māori which embraces whakapapa and focuses on obligations within relationships (Mead, 2016). Relationships, and therefore whānau as a primary expression of relationship through whakapapa, are of the utmost significance to Māori. In explaining the core values of tikanga Māori, Williams (2013) describes whanaungatanga as “the glue that held, and still holds, the system together; the idea that makes the whole system make sense” (p. 4).

Whānau connection has been recognised as integral to overall Māori well-being. Durie (1998) asserts that “interdependence rather than independence is the healthier goal” (p. 72). The principle of whānau and familial interconnectedness is reflected across a range of different Kaupapa Māori health frameworks developed by leading Māori health practitioners. Whakapapa and whānau relationships establish collective identity and also carry a relative responsibility to maintain the well-being of the whole (Boulton, Cvitanovic, Potaka-Osborne, & Williams Blyth, 2018).



In 2016, a relational model of whakapapa whānau was developed by Tahu Kukutai, Andrew Sporle and Matthew Roskrige as part of an analysis of data from the first Māori Social Survey (Te Kupenga), conducted in 2013, examining expressions of whānau (Superu, 2016; see Figure 1).

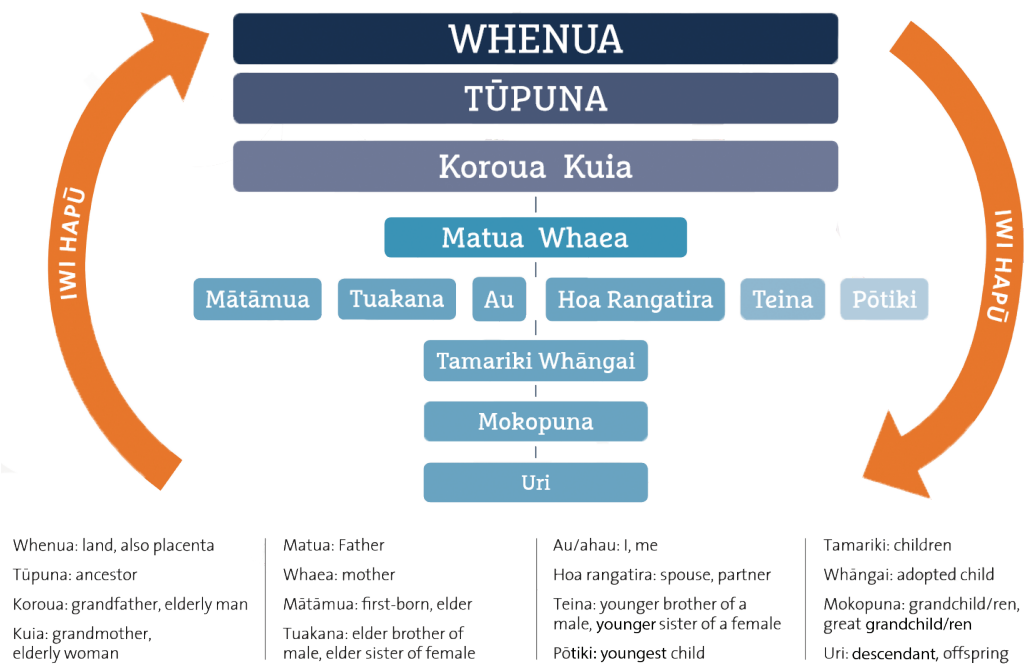


Figure 1. A relational model of whakapapa whānau (Superu, 2016, p. 55).

This expression of whānau is part of a broader whānau well-being research programme which is based on the Whānau Rangatiratanga conceptual framework (Superu, 2016, 2017; see Figure 2).



Figure 2. Whānau Rangatiratanga conceptual framework (Superu, 2016, p. 110).

As will be explained later in this paper, any Kaupapa Māori approach is born from Te Ao Māori and will inherently value whakapapa, whānau and whanaungatanga. These principles need to guide the effects of measuring care and protection decision-making concerning Māori families and our children.

III THE DISPARITIES CONTEXT

Aotearoa New Zealand was lauded for enacting world-leading child welfare legislation with the passing of the Children, Young Persons, and Their Families Act 1989 (the 1989 Act). The original 1989 Act acknowledged that the welfare and best interests of a child were paramount and made provision for Māori children to be viewed and cared for in the context of their whānau, hapū and iwi. The 1989 Act was intended to represent the aspirations of Māori to be able to care for their own children even in situations of family crisis, and provided a platform for the practical application of tikanga Māori in decision-making.

The primary object of the 1989 Act was to “promote the well-being of children, young persons, and their families and family groups” (section 4). For Pākehā children the 1989 Act has been mostly successful. In the last decade, the number

of Pākehā children in state care has fallen by 20 per cent. The opposite is true for Māori children. The most recent available Ministry statistics are those as reported in 2015. In that year, tamariki Māori were more significantly over-represented in the Child, Youth and Family system than was previously the case. Though Māori made up only 30 per cent of the annual birth rate, 57 per cent of children within the Child, Youth and Family system by the age of five years were Māori (Ministry of Social Development [MSD], 2015a, p. 34). Six out of 10 children who remained in the system and ended up in state care were Māori (MSD, 2015a, p. 8). The Office of the Children’s Commissioner (2015) echoed this figure (see Figure 3).

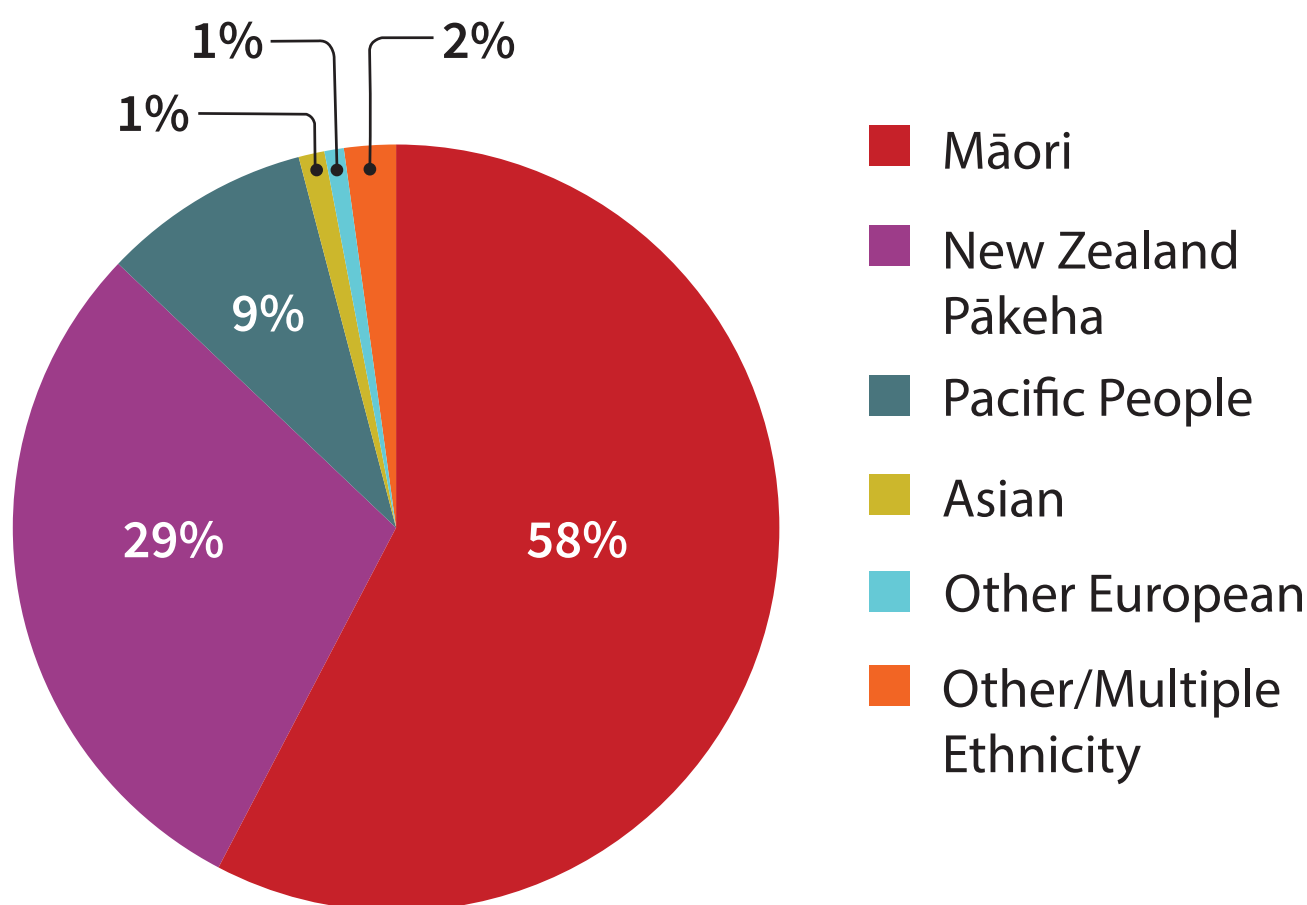


Figure 3. Primary ethnicity of children in care (as of March 2015) (Office of the Children’s Commissioner, 2015, p. 10).

These ethnic disparities lead to Māori being disproportionately represented in the youth justice system. As at 2015, although Māori made up only 25 per cent of children and young people aged 10 to 16 years in New Zealand, young Māori comprised 60 per cent of those involved in the youth justice system. This percentage increases further along the system, with Māori comprising seven out of every 10 young people placed in a secure youth justice residence by court order (MSD, 2015a).

The 1989 Act was framed by the Puao-Te-Ata-Tu report of 1988. Produced by the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, Puao-Te-Ata-Tu called for direct Māori involvement in social welfare policy and the implementation of unique Māori practices and values in social welfare practice, for the

betterment of Māori. Despite the promise of Puao-Te-Ata-Tu, and the subsequent 1989 Act, the 1989 Act never realised the vision that Puao-Te-Ata-Tu had heralded. Boulton et al. (2018) recently commented that “the reasons for this are many and complex, but part of the blame lies with a lack of government funding to truly implement the legislation and poor social work practice” (p. 4).

Against this background of statistics, we call here for considered action in one specific area: the ability to develop appropriate measures that make sense to Māori. The 1989 Act was overhauled in 2017 and provides an opportunity for this to occur. An insight into the Family Court and the relevant law is now provided to contextualise the possibilities presented by the change to legislation.

IV THE FAMILY COURT

The Family Court was established in response to recommendations made by the 1978 Royal Commission on the Courts (the Beattie Commission). It is clear from this report that the role of the Family Court was intended, from the beginning, to differ from that of the general courts:

The Family Court concept demands that the Family Court should be essentially a conciliation service with court appearances as a last resort, rather than a court with a conciliation service. The emphasis is thus placed on mediation rather than adjudication. In this way, the disputing parties are encouraged to play a large part in resolving their differences under the guidance of trained staff rather than resorting to the wounding experience of litigation, unless such a course is inevitable. (Beattie, 1978, p. 484)

The Family Court was intended to straddle two functions: to be both a court of law and a social agency. The Beattie Commission itself, adopting the view of the Canadian Ontario Law Reform Commission, stated that “by their very nature, Family Courts have a twofold function, judicial and therapeutic, and there is room for both to operate” (Beattie, 1978, p. 479).

The Family Court deals with lots of issues, from making orders for children not yet born right through to older people who are in need of care and protection. Some of the primary work of the Family Court includes resolving relationship property disputes between couples separating and making parenting orders for care of children when these couples divorce.

Some of the legislation that the Family Court deals with includes the Adoption Act 1955; Care of Children Act 2004; Child Support Act 1991; Domestic Violence Act 1995; Family Proceedings Act 1980; Family Protection Act 1955; Law Reform (Testamentary Promises) Act 1949; Oranga Tamariki Act/Children’s and Young People’s Well-being Act 1989; Property (Relationships) Act 1976; and the Protection of Personal and Property Rights Act 1988.

An important role of the Family Court is to make custody orders for care or protection applications. These cases are brought to the Family Court by an Oranga Tamariki Ministry for Children social worker or the police when they think a child is being harmed or neglected. The Family Court is asked to legally recognise that the child is in need of care or protection.

Although there were initial high expectations for the Family Court, and a new way of operating was introduced after the initial enactment of the 1989 Act, a range of issues have prevented the realising of its original aspirations. The Family Court was reviewed in 2011/2012 and the Ministry of Justice found that:

- current court processes were complex, uncertain, and too slow; and
- there was a lack of focus on children and vulnerable people.

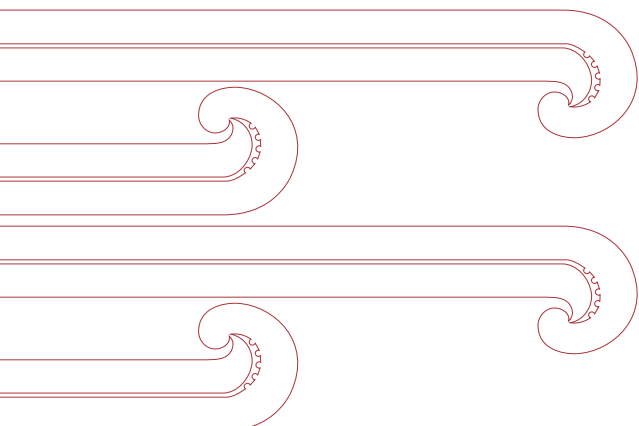
Concern about the Family Court and its processes continues to be expressed. The Chief Judge of the District Court, Jan-Marie Doogue, commented in May 2018:

As the second biggest division of the District Court, the Family Court is under enormous strain. It deals with the most basic rights to care, shelter and protection for our most vulnerable New Zealanders, be they mentally unwell, elderly, domestic violence victims, abused and neglected children or those families being torn apart by intractable contact and custody disputes. (para. 22)

In 2014, major changes were made to the family justice system primarily aimed at helping people to resolve parenting disputes without having to go to court (to make the Care of Children Act 2004 work better). This included requiring mediation before parents could apply to the Family Court, and removing lawyers from the early stages of some court proceedings. However, the Ministry of Justice knows some of these changes are not working for some people, as is evidenced by a third government review now being in process.

The third government review of the Family Court in the last decade has now commenced (Walters, 2018). On 1 August 2018, the current Minister of Justice, the Hon. Andrew Little, appointed an Independent Panel consisting of former Chief Human Rights Commissioner Rosslyn Noonan and family law experts La Verne King and Chris Dellabarca, who are supported by an expert reference group. The Panel is evaluating the package of changes to the family justice system made in 2014. The Minister has explained:

The 2014 changes were meant to help people resolve parenting disputes without having to go to court, but have in fact led to the opposite as there’s been a huge increase in the number of urgent “without notice” applications which have to be put before a Family Court judge. I am concerned that families and children are losing out as a result of not receiving adequate advice and support during this distressing time. The last Government removed access to lawyers in many cases and I’m concerned about how this and the other changes have impacted on access to justice. (Little, 2018, paras. 3–4)



The Panel is considering the 2014 reforms' effectiveness in protecting the interests of children, and in achieving safe and durable outcomes for them when resolving parenting disputes about their care or contact pursuant to the Care of Children Act 2004 (e.g., custody issues). The work is not a first principles review of the Family Court, and it will not be considering matters about care and protection, although the Minister has recognised that wider concerns beyond the 2014 reforms will be raised. The Minister has asked the Panel to collate this information and report it back to him to be considered alongside the Panel's recommendations in mid-2019. This review is not primarily focused on the care and protection law, although there is often an overlap. We assert that wherever the well-being of Māori children is being assessed, the same Kaupapa Māori derived from a focus on whānau, whakapapa and whanaungatanga should apply.

V THE ORIGINAL CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES ACT 1989

The Children, Young Persons, and Their Families Act 1989 was heralded as a radical shift in the way child welfare was approached through New Zealand legislation. The Act was passed following the Puao-Te-Ata-Tu report, which put forward several recommendations for reforming the New Zealand child welfare system, particularly with regard to the needs of Māori. The key theme of this report was the need for a system which prioritised wider family networks being utilised and consulted around the care of children. This approach was translated into the 1989 Act, along with an emphasis on the system recognising the cultural relevance and strength of whānau, hapū and iwi (Connolly, 1994). This was a shift from the Children and Young Persons Act 1974, which was perceived as creating a more fragmented approach to child welfare.

One of the key innovations of the 1989 Act was the introduction of the Family Group Conference. A Family Group Conference provides an opportunity for the wider family to come together where there is a care or protection issue involving a child, to reach an outcome which takes into account the views of the family. The concept is largely inspired by a Māori worldview but applies to all who come into contact with the system, not just Māori (Ruru, 2013).

Despite the potential that the Children, Young Persons, and Their Families Act represented in 1989, its implementation has failed tamariki and whānau in crisis.

Since the introduction of the 1989 Act, the number of Pākehā children in state care has decreased while the numbers of Māori children in state care has increased.

The way that the Family Court operates (and indeed the general judicial system) can often be at odds with Māori values (Moyle, 2013; New Zealand Law Commission [NZLC], 2002; Rickard, 2014). For example, the need to involve the wider whānau, hapū and iwi in legal processes is essential from a Māori perspective, but the current processes neglect Māori values by focusing on the Western concept of the nuclear family (NZLC, 2002, p. 28). The system has been described by Māori as lacking respect for whānau, hapū

and iwi, and as culturally alienating, disempowering and judgemental (Boulton et al., 2018, p. 5). Issues include a lack of understanding of the complexities of the court system, poor communication with agents of the court and lawyers, the silencing of whānau voices, and the general inflexibility of the court process (Boulton et al., 2018).

In a 2017 address to Te Hunga Rōia Māori o Aotearoa (the New Zealand Māori Law Society), former principal Youth Court judge and current Children's Commissioner Andrew Becroft told the audience how the judicial system and the Family Court had come so close to doing right by Māori children under the 1989 Act. However, he went on to say that:

If I'm honest, like everyone else in the system, I read that provision as if it stopped at whānau. No one talked about it in that language [of whānau, hapū and iwi]. By 2001, you could have just about twinkled out those words in the legislation. And I stand condemned because I'm one of the lead judges that had responsibility for the Act. And throughout all my time, we practised with a half-baked, twinkled-out Act, that never, ever, delivered on its promise. (Becroft, as quoted in Fuatai, 2017, paras. 14–15)

Family Group Conferences have also suffered from this lack of full implementation. Family Group Conferences have been a mandated practice in Aotearoa New Zealand since 1989. Under the Oranga Tamariki Act, aside from particular situations, the Family Court cannot make a declaration that a child or young person is in need of care and protection (or a care and protection order under the amendments to come into force by July 2019) unless a Family Group Conference has been held.

Family Group Conferences were originally introduced in an effort to involve whānau, hapū and iwi in the decision-making process. However, studies have found that whānau, hapū and iwi who engage in this process are growing sceptical of them as they move towards more directive interactions as opposed to open group discussions (Connolly, 2006). Other detrimental changes have also been made which diminish Māori values in the process, such as holding fewer meetings on marae and more within Child, Youth and Family offices (Cram, 2012). As Becroft stated:

I often thought if a visitor from Mars came to New Zealand and looked at our care and protection system [for children], they would say there's no sign of intelligent life on Earth – because it is a Pākehā system with Māori add-ons, sadly for a clientele – 63 per cent – who are Māori. Surely, we should have a Māori system with some clip-ons who are Pākehā? (as quoted in Fuatai, 2017, para. 20)

The Family Court's role in care and protection of children does not engage with the wider context. For example, the Family Court's role in "child rescue" provides a diminished role for whānau, hapū and iwi in solution-finding, and shows a lack of consideration for the contextual issues that affect Māori more than other groups (Keddell, 2017).

The original 1989 Act has recently been reformed and presents new possibilities for the Ministry that must result in better outcomes for Māori.

VI THE NEW RENAMED ACT: THE ORANGA TAMARIKI ACT 1989

The Children, Young Persons, and Their Families Act 1989 (the 1989 Act) has recently been overhauled by the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act). The 2017 Act renamed the 1989 Act with a dual te reo Māori/English title: the Oranga Tamariki Act 1989 / Children's and Young People's Well-being Act 1989 (the revised 1989 Act).

A new government department was created in 2017 called the Oranga Tamariki Ministry for Children (initially named the Ministry for Vulnerable Children) to replace the Child, Youth and Family government agency. Some of the legislative changes introduced in 2017 came into force in July 2017, but a few provisions do not come into force until this year.

One of the sections in the 2017 Act that has great potential to change care and protection decision-making for tamariki Māori is section 7AA, which was introduced above. This section will sit within the revised 1989 Act and will come into force in July 2019.

This legislative reform was the result of a build-up of concern that the current system was ineffective, was not centred on the views of children themselves and was allowing vulnerable children to slip through the cracks. A key factor in this was the fragmented nature of the system, which relied on several agencies and ministries working in concert. In particular, reviews of Child, Youth and Family, a key agency in child protection, led to unfavourable reports on the outcomes they were achieving. This included the fact that Māori children were still significantly over-represented in the system (MSD, 2015b).

The 2017 Act does more than just rename the 1989 Act. It has laid out significant new amendments to the 1989 Act that are intended to facilitate a fundamental overhaul of the system.

A The rationale for the legislative change

An Expert Panel (the Panel), appointed by the government in 2015, contributed to the policy behind the new amendments. The Panel noted in its reports that:

- a fundamental shift in the original scheme is necessary to achieve better outcomes for vulnerable children;
- it is important to recognise the significance of a child's connection to and existence within their whakapapa and wider family context; and
- the social sector should recognise the value in Treaty partnership within its new operating model. (MSD, 2015b)

The Panel also recognised that there must be particularly high aspirations to reduce the over-representation of Māori in the system through partnership and increasing the capacity of those who work in the system to serve the needs of Māori, which is in the best interests of all New Zealanders (MSD, 2015b).

The MSD analysed the recommendations from the Expert Panel in a Regulatory Impact Statement released in 2016. The Ministry noted that for any change in the law to address the gap between Māori and non-Māori, a modern perspective on the importance of culture and identity to the well-being of Māori is required (MSD, 2016). The MSD (2016) also stated that the new system must recognise a mandate for Māori leadership, namely iwi organisations, in making decisions, as they are best placed to work with and support tamariki Māori.

B The new law

Several significant reforms have now come into force. Key changes to the Act included extending the care and protection system to include 17-year-olds and extending the transitional support available. This means that young people who have been in care are now entitled to continue living in their household up until the age of 21, with additional support available until they are 25. The reforms have also aimed to make the system more child centred, with room for their voices to be heard and a focus on improving Māori outcomes (Ministry for Vulnerable Children, Oranga Tamariki, 2017).

Prior to these reforms taking effect in 2017, Child, Youth and Family was the key agency for childcare and protection. This agency sat within the MSD and has been described as taking a reactive crisis-intervention approach (MSD, 2015b). In contrast, the focus of the newly established Oranga Tamariki Ministry for Children is on prevention. Six critical aspects ground the new Ministry: a child-centred system, high aspirations for Māori children, an investment approach, strategic partnerships with community, practice-based outcomes and engagement with all New Zealanders. There is a particular emphasis on the investment approach, which emphasises early action to prevent harm and ensure positive long-term outcomes for children. In their Strategic Intentions document, the new Ministry acknowledges that it is likely to be a five-year process before a full transition is realised.

There are other significant reforms that the 2017 Act details that have been inserted into the reformed 1989 Act and will come into effect in July 2019. Importantly, these include introducing new kupu Māori into the justice system such as mana tamaiti, whakapapa and whanaungatanga. This has potential benefits and risks. On one hand, it arguably puts kupu and tikanga Māori at the heart of the new provisions and directs decision-makers to ensure they are taken into account. On the other hand, it risks kupu and tikanga Māori being misinterpreted and diluted from their true meaning. The relevant kupu Māori will be defined in the revised 1989 Act as:

mana tamaiti (tamariki) means the intrinsic value and inherent dignity derived from a child's or young person's whakapapa (genealogy) and their belonging to a whānau, hapū, iwi, or family group, in accordance with tikanga Māori or its equivalent in the culture of the child or young person

tikanga Māori means Māori customary law and practices **well-being**, in relation to a child or young person, includes the welfare of that person

whakapapa, in relation to a person, means the multi-generational kinship relationships that help to describe who the person is in terms of their mātua (parents), and tūpuna (ancestors), from whom they descend

whanaungatanga, in relation to a person, means—

- (a) the purposeful carrying out of responsibilities based on obligations to whakapapa:
- (b) the kinship that provides the foundations for reciprocal obligations and responsibilities to be met:
- (c) the wider kinship ties that need to be protected and maintained to ensure the maintenance and protection of their sense of belonging, identity, and connection.

There are new opportunities created by the revised legislation, particularly in section 7AA, as we discuss below.

However, some have argued that a number of the 2017 amendments will “significantly weaken Māori participation in decision making and remove the priority of placing Māori children with their whānau, hapū and iwi” (Boulton et al., 2018, p. 26). In addition, “the impact of the subsequent children and special guardianship provisions indicate that Māori are likely to lose a generation of children” (Boulton et al., 2018, p. 26). These are serious concerns but are beyond the scope of the present paper, which now turns to consider the opportunities that section 7AA could provide to improve outcomes for tamariki Māori and their whānau.

C The new section 7AA(2)(a)

The new section 7AA of the Oranga Tamariki Act 1989 will provide for the duties of the chief executive in relation to Te Tiriti o Waitangi (the Treaty of Waitangi). The MSD (2016) called for these duties so as to embed the importance of focusing on achieving better outcomes for Māori, to provide accountability for achieving those outcomes, and to ultimately reduce Māori over-representation by innovating strategic partnerships with iwi to deliver more appropriate services where they are needed. The MSD (2016) recommended that a duty be placed on the chief executive that respects the Treaty of Waitangi and endorses accountability to Māori and strategic relationships with iwi organisations, while also upholding mana tamaiti.

Section 7AA will not gain legal force until July 2019, unless made enforceable by Order in Council before that date. It reads:

7AA Duties of chief executive in relation to Treaty of Waitangi (Tiriti o Waitangi)

- (1) The duties of the chief executive set out in subsection
- (2) are imposed in order to recognise and provide a practical commitment to the principles of the Treaty of Waitangi (te Tiriti o Waitangi).
- (2) 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:
 - (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.
- (3) One or more iwi or Māori organisations may invite the chief executive to enter into a strategic partnership.
 - (4) The chief executive must consider and respond to any invitation.
 - (5) The chief executive must report to the public at least once a year on the measures taken by the chief executive to carry out the duties in subsections (2) and (4), including the impact of those measures in improving outcomes for Māori children and young persons who come to the attention of the department under this Act and the steps to be taken in the immediate future.
 - (6) A copy of each report under subsection (5) must be published on an Internet site maintained by the department.

Despite the negative consequences that may arise from these recent amendments, there is opportunity in section 7AA to achieve better outcomes for tamariki Māori. To realise that opportunity, **Māori need to be a part of framing and implementing that opportunity to ensure that the other amendments do not continue to perpetuate the current problem that we have with the over-representation of Māori children in state care.** Indeed, “Māori must be part of the solution if we are ever to reduce the number of Māori children in care” (Boulton et al., 2018, p. 26). Māori children must be considered central to the redesign of the system, rather than a secondary consideration (Office of the Children’s Commissioner, 2018).

VII REDUCING DISPARITIES BY SETTING MEASURABLE OUTCOMES – A KAUPAPA MĀORI APPROACH REQUIRED

The obligation in the new incoming section 7AA(2)(a) of the Oranga Tamariki Act 1989 provides an opportunity to develop a Kaupapa Māori approach to measuring disparity. The chief executive will have a statutory obligation to ensure that “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”.

Section 7AA(5) requires annual reporting to the public on those measures, “including the impact of those measures in improving outcomes for Māori children and young persons who come to the attention of the department under this Act and the steps to be taken in the immediate future”.

Kaupapa Māori models for assessing well-being and other holistic indicators to measure the reduction of disparities provide alternative assessment models for Oranga Tamariki and other decision-makers to use under the Oranga Tamariki

Act. The new purposes of the Oranga Tamariki Act also provide a reference point to frame the obligation in section 7AA(2). The obligation in section 7AA(2)(a) should be grounded in these Kaupapa Māori models and the broad purposes of the Oranga Tamariki Act.

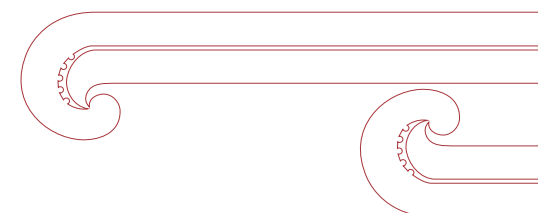
Within Oranga Tamariki, the Oranga Tamariki Evidence Centre (Te Pokapū Taunakitanga) works to build the evidence base that helps us better understand well-being and what works to improve outcomes for New Zealand’s children, young people and their whānau (Oranga Tamariki Ministry for Children, 2018). Internally, this centre could be the vehicle to ensure that best-practice Kaupapa Māori research and models form the basis for addressing the obligation in section 7AA(2). This paper now outlines a summary of some of these models.

A Kaupapa Māori frameworks and models

When describing Kaupapa Māori research, Linda Tuhiwai Smith (1999) said:

One of the challenges for Māori researchers . . . has been to retrieve some space – first, some space to convince Māori people of the value of research for Māori; second, to convince the various, fragmented but powerful research communities of the need for greater Māori involvement in research; and third, to develop approaches and ways of carrying out research that take into account, without being limited by, the legacies of previous research, and the parameters of both previous and current approaches. What is now referred to as Kaupapa Māori approaches to research, or simply as Kaupapa Māori research, is an attempt to retrieve that space and to achieve those general aims. The naming of research has provided a focus through which Māori people, as communities of the researched and as new communities of researchers have been able to engage in a dialogue about setting new directions for the priorities, policies, and practices of research for, by and with Māori. (p. 183)

Despite the literature on Kaupapa Māori research, and the use of Kaupapa Māori models, the default in Aotearoa New Zealand is to use Western and Eurocentric frameworks to measure well-being. Eurocentric frameworks for measuring health and well-being outcomes do not lend themselves to a Māori way of being, and are therefore inappropriate on their own in providing a full picture of Māori well-being. The inadequacies of these mainstream measures are attributable to their theoretical perception of what an ideal or preferred outcome might be – a critical part of development of outcome measures – which often fails to consider all aspects of health which are important and relevant to those undergoing assessment (Kingi & Durie, 2000).



Stephanie Palmer concludes that well-being measures being used in this country are not responsive to the needs of Māori, are not based on Māori concepts or constructs, do not facilitate Māori participation in Te Ao Māori, and do not provide pathways through which Māori can develop a positive Māori identity, which makes it highly unlikely that these tools will help Māori to experience whānau ora or overall health (Palmer, 2003). The Whānau Ora Outcomes Framework, which was developed jointly by iwi leaders and Crown ministers under the auspices of the Whānau Ora Partnership Group, builds on the work of the Whānau Ora Taskforce. Māori concepts of well-being, including broader social, cultural and economic indicators, are utilised, which focus on collective, whānau-level outcomes, ensuring an approach “that is intimately connected to Māori values and practices” (Moore, 2014, p. iii; see also Gifford, Batten, Boulton, Cragg, & Cvitanovic, 2018).

Although universal indicators and measures can be applied, there must also be consideration and specific measurement of unique characteristics of Māori which are attuned to Māori realities and to Māori worldviews (Durie, 2006). Māori health research focuses on the health of Māori people, and therefore must take full cognisance of Māori culture, Māori knowledge and contemporary Māori realities, as any “universal” approach falls well short of being able to locate Māori at the centre of the exercise or even to seriously incorporate Māori needs (Durie, 1996). Indeed, contemporary health research has developed at the expense of increasing a holistic understanding of health and well-being, important to Māori concepts of health (Durie, 1996).

Kaupapa Māori models provide tools, grounded in tikanga and mātauranga Māori, for (among other things) measuring outcomes in a culturally safe and appropriate way. Several well-established models are outlined below.

1 Te Whare Tapawhā

Te Whare Tapawhā, a model of health and well-being widely accepted by Māori, compares health to the four walls of the house, all four being necessary to ensure strength and symmetry and each wall representing a different dimension of health – taha wairua, taha tinana, taha hinengaro and taha whānau (Durie, 1998; see Figure 4). This framework is focused on the well-being of the individual in the broader context of their whakapapa.

Taha wairua implies a capacity to have faith and to be able to understand the links between the human situation and the environment. Taha hinengaro is about expression of thoughts and feelings – the notion that these are vital to health, which is a well-recognised concept among Māori. Taha tinana, comparable to bodily health, resembles a familiar Western health dimension (noting the Māori emphasis is different in that there is the clear separation of tapu and noa). Taha whānau acknowledges the relevance of extended family to health, and acknowledges that family is the prime support system for Māori and also becomes a source of identity and purpose.

Capacities for measuring Māori well-being

There are six capacities for measuring Māori well-being, which are focused around the well-being of the whānau (Durie, 2006):

- **Manaakitanga**, the capacity to care, is a critical role for whānau, especially in respect of children and older members. Care also entails the promotion of lifestyles that are consistent with tikanga Māori and allows for maximum well-being, mobility and independence, full participation in society, and reciprocated care for other whānau members.
- **Pupuri taonga**, the capacity for guardianship, expects whānau to act as wise trustees for the whānau estate – whenua tūpuna (customary land), heritage sites such as fishing spots, environmental sites of special whānau significance, urupā and wāhi tapu.
- **Whakamana**, the capacity to empower, is a whānau function that facilitates the entry of members of the whānau into the wider community as individuals and as Māori.
- **Whakatakoto tikanga**, the capacity to plan ahead, requires a capacity to anticipate the needs of future generations and to manage whānau resources (human and physical) so that those needs may be met.
- **Whakapūmau tikanga** is a further whānau function. It relates to the capacity to transmit language, cultural values, narratives, song, music and history.
- **Whakawhanaungatanga**, the capacity for consensus, reflects the need for whānau to develop decision-making processes where consensus is possible and collective action strengthened in a way that is fair and consistent with tikanga.

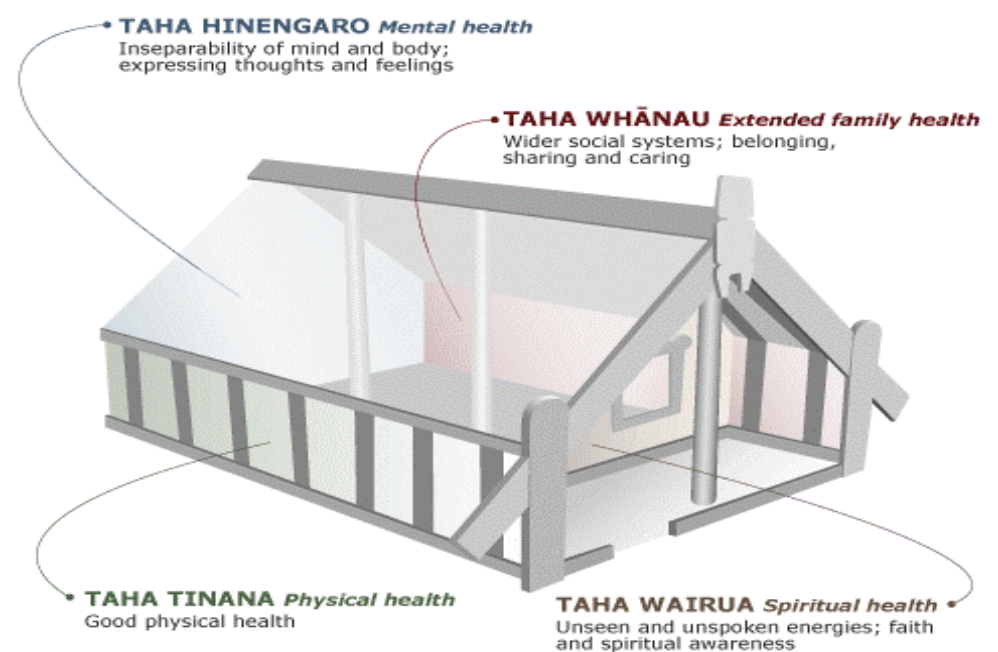


Figure 4. Te Whare Tapawhā (Durie, 1998).

Outcome classes for measuring Māori well-being

There are four outcome classes measuring Māori well-being in Te Whare Tapawhā, which are focused on the well-being of te iwi Māori as a whole (Durie, 2006).

- **Te Manawa** – a secure cultural identity, which results from individuals being able to access Te Ao Māori and to participate in those institutions, activities and systems that form the foundations of Māori society.
- **Te Kāhui** – collective Māori synergies. An important consideration for Māori is the notion of community itself, as there is a link between personal well-being and community well-being.
- **Te Kete Puāwai** – Māori cultural and intellectual resources. The state of cultural and intellectual resources of Māori is an important consideration because these are fundamental components of modern Māori society.
- **Te Ao Tūroa** – the Māori estate, which relates to the frequently expressed Māori view that present generations are trustees for future generations, especially in connection with whenua.

Principles for measuring Māori well-being

Durie (2006) identifies four principles as important for assessing Māori health and well-being:

- **Indigeneity** is essentially based on a worldview that emphasises the link between people and their natural environment as a fundamental starting point, recognising that human well-being is inseparable from the natural environment.
- **Integrated Development** recognises that Māori development is built on economic, cultural, social and environmental cohesion, and underlines the importance of an integrated approach to development.
- **Multiple Indicators** recognises that a range of measures are necessary to assess outcomes for Māori as the use of narrow single-dimension measures ignores the multiple dimensions of Māori well-being.
- **Commonalities** recognises that despite diversity among Māori, shared characteristics act to bind the Māori population because there are sufficient commonalities to warrant treatment as a distinctive population, at least for measuring social, economic and cultural parameters.

2 Meihana model

The Meihana model is an expansion of Te Whare Tapawhā and is a framework which facilitates fusion of clinical and cultural competencies to better serve Māori within mental health service delivery (Pitama et al., 2007; see Figure 5). It rests on the prerequisite that clinicians who utilise it have a clear understanding of cultural safety and cultural competency, and are able to demonstrate abilities within both of these areas with regard to Māori.

The Meihana model has six Māori named dimensions on the waka that interconnect to form a multidimensional assessment tool for the strengths and abilities of a clinician while taking into account the diverse needs of the client and their whānau:

- **Whānau** – which ensures whānau have key role in the assessment, intervention and monitoring process.
- **Tinana** – which ensures the service encompasses the importance of physical well-being and its relationship to overall psychological well-being.
- **Hinengaro** – which ensures cultural accountability of measures used to provide evidence.
- **Iwi-Katoa** – which identifies current organisational strengths and weaknesses to work effectively with Māori.
- **Wairua** – an investigation of factors that contribute to engagement and level of attachment the client/whānau feel to the service being provided.
- **Taiao** – which ensures physical accessibility and acceptability of the service.

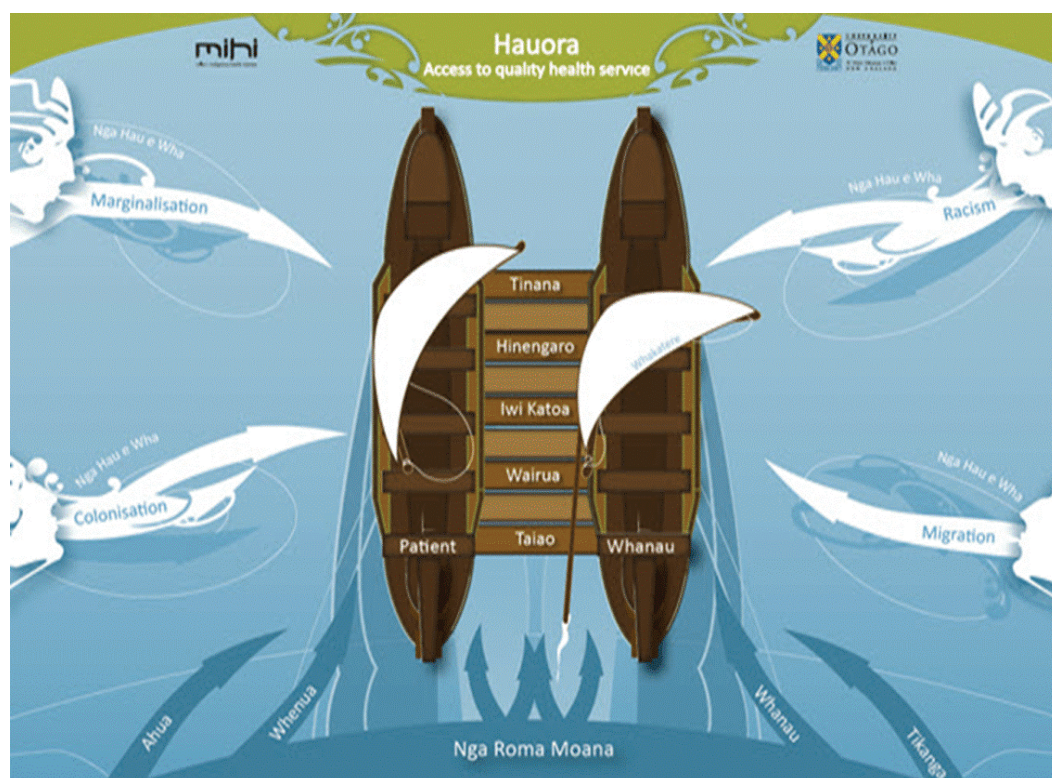


Figure 5. Meihana model (Pitama et al., 2007).

3 Te Pae Mahutonga

Te Pae Mahutonga is a symbolic map of the Southern Cross constellation that brings together the significant components of health promotion as they apply to Māori health (Durie, 1999; see Figure 6) The four central stars are used to represent the four key tasks of health promotion and to reflect goals of health promotion: Mauriora, Waiora, Toiora, Te Oranga. The two pointers are Ngā Manukura and Te Mana Whakahaere. The constellations are described as:

- **Mauriora** (access to Te Ao Māori) rests on a secure cultural identity. Good health depends on many factors, but among Indigenous peoples, cultural identity is considered to be a critical prerequisite.
- **Waiora** (environmental protection) is linked more specifically to the external world and a spiritual element that connects human wellness with cosmic, terrestrial and water environments.
- **Toiora** (healthy lifestyles) is about having the capacity to avoid risks that threaten health and safety and distort human experience.
- **Te Oranga** (participation in society) is about the goods and services which people can count on, and the voice they have in deciding the way in which those goods and services are made available.
- **Ngā Manukura** (leadership) reflects a combination of skills and influences, and maintains that unless there is local leadership it is unlikely that a health promotional effort will take shape or bear fruit.
- **Te Mana Whakahaere** (autonomy) maintains that capacity for self-governance, not only for a specific health promotional programme, but more importantly for the affairs and destinies of a group, are central to notions of good health and positive well-being, and that self-governance should exist at local, marae, hapū, iwi and national levels.

4 Te Wheke

Developed by Te Rangimare (Rose) Pere (2017), the concept of Te Wheke (the octopus) frames whānau health (see Figure 7). The head and body of the octopus represent Te **Whānau**, the eyes represent **Waiora** (total well-being for the individual and family) and each of the eight tentacles represents a specific dimension of health. The dimensions are interwoven, and this represents the close relationship of the tentacles (Pere, 2017). The eight tentacle dimensions are **Wairuatanga** – spirituality, **Hinengaro** – the mind, **Taha Tinana** – physical well-being, **Whanaungatanga** – extended family, **Mauri** – life force in people and objects, **Mana Ake** – unique identity of individuals and family, **Hā a Koro Mā, a Kui Mā** – breath of life from forbearers, and **Whatumanawa** – the open and healthy expression of emotion (Pere, 2017).

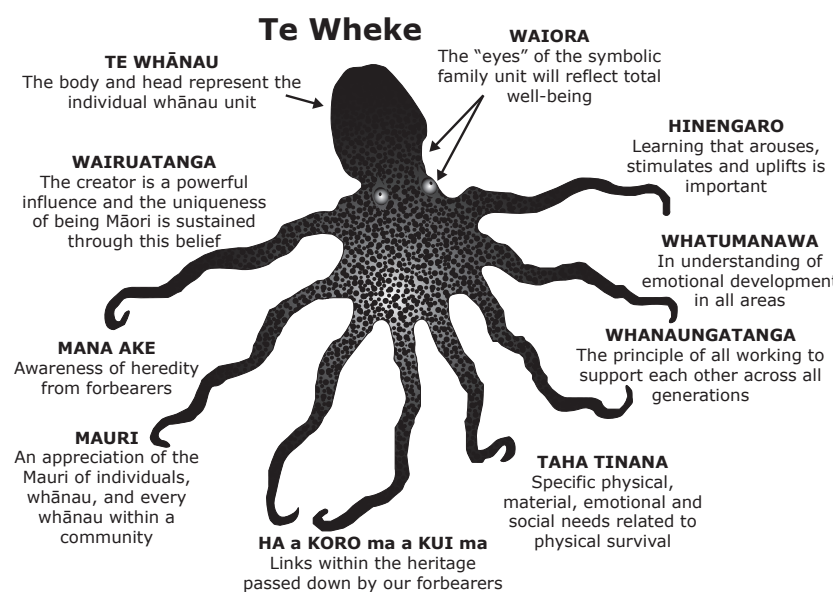


Figure 7. Te Wheke (Pere, 2017).

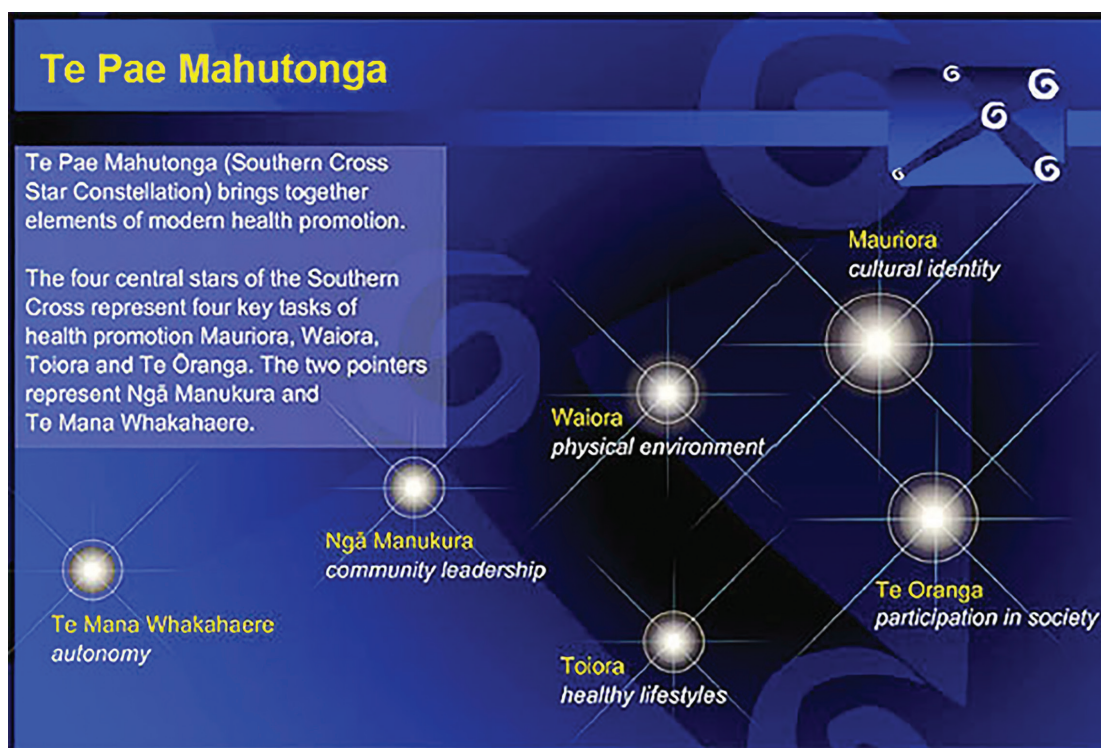


Figure 6. Te Pae Mahutonga (Durie, 1999).

5 *Te Puawaitanga o Ngā Whānau*

The Te Puawaitanga o Ngā Whānau framework, based on a number of existing Kaupapa Māori frameworks, outlines six primary indicators for flourishing whānau:

- **Whānau Heritage** indicators include whānau, whakapapa connections, whānau access to cultural skills and knowledge, whānau links to customary land, whānau presence on marae, whānau associations with Māori organisations, whānau access to urupā and whānau taonga.
- **Whānau Wealth** indicators include whānau assets, whānau income, whānau financial reserves, whānau housing and home ownership, whānau access to Māori trust funds and whānau investment portfolios.
- **Whānau Capacities** indicators include whānau educational achievements, whānau lifestyles, whānau management of health, whānau employment, whānau utilisation of communication technologies and whānau transport.
- **Whānau Cohesion** indicators include the quality of relationships within households and within the wider whānau, the use of online communication systems, opportunities for whānau living elsewhere to participate in whānau life, whānau leadership, whānau events and participation in those events, involvement in whānau “traditions”, and whānau wānanga.
- **Whānau Connectedness** indicators include whānau utilisation of societal institutions and facilities, whānau participation in sport or recreation, whānau engagement in community affairs, whānau exercise of citizenship rights, whānau utilisation of banking and other financial institutions, and whānau contributions to community committees, boards and voluntary efforts.
- **Whānau Resilience** indicators include whānau futures planning, evidence of positive whānau change over time, opportunities for the transmission of values and knowledge between generations, a capacity to retain heritage while participating fully in modern society and strong whānau leadership. (Kingi & Durie, 2000; Kingi et al., 2014)

B *Key themes within Kaupapa Māori models/frameworks*

The following are some key themes that can be distilled from the Kaupapa Māori models for governmental consideration when designing a framework for section 7AA(2)(a):

- **Focus on whānau:** Whānau, whakapapa and whanaungatanga are an integral part of measuring Māori health and well-being.
- **Holistic approach:** In short, there is no single measure of well-being; instead, a range of measures are necessary so that the circumstances of individuals and groups, as well as the relationships, perspectives and assets within Te Ao Māori can be quantified and monitored (Durie, 2006).

- **Non-comparative:** A widespread practice is to compare Māori well-being with the well-being of other population groups such as Pākehā, Pasifika and Asians. While such comparisons can be useful, their utility is confined to the measurement of universal aspects of well-being such as disease prevalence and educational attainment. As an alternative to population comparisons, however, it is suggested that comparisons of Māori with Māori at different periods of time might be more indicative of progress (Durie, 2006).
- **Strengths-based:** Focusing on deficits alone ignores the strengths that exist within Māori communities to create change for themselves (New Zealand Productivity Commission [NZPC], 2015). Previously, research which impacted on Māori health was sporadic, generally illness oriented and more often than not focused on comparisons with non-Māori health. Māori health research has largely been left to academic medical researchers, few of whom are Māori or able to present a Māori view (Durie, 1996). This fails to adopt a positive outlook or way forward for Te Ao Māori.
- **Non-binary:** How success is measured in social investment requires careful consideration. The attraction of the new metric-driven social investment paradigm is that the effects of a standardised prevention programme can be measured quantitatively and then compared to future outcomes. But human behaviour and experience is not that straightforward (Keddell, 2017). The benefits of data analytics need to sit alongside traditional Māori knowledge about relationships and well-being that is part of tikanga. Much statistical information is on an individual basis but, in the context of Te Ao Māori and empowering Māori communities, being able to understand the situation within whānau and hapū is important (NZPC, 2015).
- **Tino rangatiratanga:** The exploration of objective and subjective Māori well-being, and whānau well-being, may likewise require a discussion about where government responsibility ends and Māori responsibility takes over, especially when well-being indicators and data are specific to a hapū or iwi. It may well be that the cultural responsiveness of hapū and iwi well-being measures can only be assured when the development, implementation and analysis of measurement tools rest with hapū and iwi (Cram, 2014). This is another common theme recognised in frameworks for the betterment of Māori. Central to the notion of Māori health development is Māori control. Unless Māori themselves are active in developing policies for health and bringing effective health services to their own people, then no amount of expert advice will provide the necessary conviction of ownership which is crucial for developing an approach to health that makes sense to Māori (Durie, 1998). Māori must regain tino rangatiratanga in order to better provide for themselves.

VIII INTERNATIONAL APPROACHES

– A SNAPSHOT

In considering developing a Kaupapa Māori approach, it is instructive to reflect on how some overseas countries with a similar history to New Zealand and with similar over-representation of Indigenous children in state care and protection are developing measurement approaches.

A Canada

Canada has taken a proactive approach to the issue of over-representation of Indigenous children in state care and protection. Various provinces have implemented agreements with Indigenous partners that give communities more control of, and direction over, the care and protection of their children, with the intent of preventing issues reaching court. These models of care are often grounded in Indigenous culture and, in some cases, include transferring responsibility for delivering services to Indigenous organisations while retaining the support and funding of provincial and federal governments (Aboriginal Children in Care Working Group, 2015; Milward, 2016).

In Canada, child welfare is the responsibility of the provincial government, meaning that the approach taken varies from province to province. The two most prominent systems are the National Child Welfare Outcomes Indicator Matrix (NOM), which concentrates on safety, permanence, well-being and family relationships, and the Looking After Children (LAC) model, which tends to focus on the development of children in care. However, by and large, many provinces appear to have adopted the LAC approach, which was developed as a national project in Canada in the early 1990s and is based on the UK model of the same name. LAC tracks outcomes mostly by comparing the progress of children who are in care with that of children who are not in care. It has seven outcomes: (1) health, (2) education, (3) identity, (4) family and social relationships, (5) social presentation, (6) emotional and behavioural development, and (7) self-care (Kufeldt, Simard, Vachon, & Andrews, 2000).

There was much piloting of LAC, and a fair amount of implementation in many Canadian provinces (Lemay & Ghazal, 2007). The programme has encountered some resistance, however. Implementing LAC is a complex process because it requires organisational change to be successful. It is also resource intensive, requiring additional training for staff and additional work in managing the data collected (Bennet, Kennedy, & McKenzie, 2009). It is also not Indigenous developed or led.

The alternative approach is the NOM model, which was developed at the same time as LAC. NOM was initially published in 1998 (Fallon, MacLaurin, & Trocmé, 1998); however, an updated version was published in 2009 (Esposito et al., 2009). It is a multilevel, ecological framework of 10 indicators designed to measure the overlapping and often competing objectives of child welfare and provide a framework for tracking outcomes for children and families across jurisdictions. The NOM model includes four nested domains: (1) safety, (2) well-being, (3) permanence, and (4) family and community support (Esposito et al., 2009).

B Australia

Australia has been less engaged in responding to the issue of Indigenous children in care and protection. It has a limited number of Indigenous advisers for family law issues, and requires family and child services to submit an annual Indigenous action plan (Family Law Council [FLC], 2012). However, Family Court judges in Australia are beginning to understand the value of Aboriginal and Torres Strait Islander culture in child welfare decisions, and that they cannot simply apply a Western theory of law to decisions involving Aboriginal and Torres Strait Islander children (FLC, 2012). Additionally, reviews by the Family Law Council have made a number of promising recommendations, including calls to build collaboration with Aboriginal and Torres Strait Islander partners and create early intervention and outreach programmes which focus on Aboriginal and Torres Strait Islander families (Australian Law Reform Commission, 2018; FLC, 2012, 2016).

Interestingly, both Canada and Australia have adopted the Aotearoa New Zealand Family Group Conferences model. Canada, in particular, appears to have increased its effectiveness by grounding the model it has developed in strong Indigenous values. It has, for example, allowed for the presence of an Indigenous elder at Family Group Conferences and provided education on the effects of colonialism and traditional healing practices (Desmeules, 2007; FLC, 2012; Milward, 2016).

Australia's approach falls somewhere in the middle, with a national system of standards where some outcomes concern children's development and others measure the outputs of the child welfare system.

Until 2011, each state and territory in Australia had its own separate set of standards for addressing child welfare, including children in care. However, the Australian Government recognised the need for a more consistent approach, and so published a set of standards in 2011 called the National Standards for Out-of-Home Care (Darmody, McMahon, Banks, & Gilligan, 2014).

These include (1) children are given stability and security; (2) children have the right to participate in decisions concerning their care; (3) Aboriginal and Torres Strait Islander children have the right to participate in decisions concerning their placement; (4) each child has an individualised plan; (5) children's physical, developmental, psychosocial and mental health needs are assessed and attended to; (6) children have access to and support in education; (7) children have support for appropriate training, education or employment; (8) children are supported to participate in social and recreational activities; (9) children maintain connections with their family; (10) children can develop their identity; (11) children have a support person; (12) carers receive proper training; and (13) older children have transition plans (Department of Families, Housing, Community Services and Indigenous Affairs, 2011).

C United States

The US approach reflects the NOM model, concentrating on safety, permanence and well-being.

The first major federal policy providing mandated guidelines for child welfare agencies was enacted in the United States in 1974, which was followed by a slew of other reforms (Austin, Carnochan, Lawson, & Samples, 2013). The most important of these was the Adoption and Safe Families Act 1997 (ASFA). ASFA remains the central federal policy governing the operations of child welfare agencies. It emphasises evaluation and measurement of agency performance, and set the course for the development of the current federal child welfare evaluation process, the Child and Family Services Review (Austin et al., 2013).

CSFR was initiated in 2001 in response to section 1123A of the Social Security Act 1994, which requires the Department of Health and Human Services to review state child and family service programmes to ensure substantial conformity with the state plan requirements (US Department of Health and Human Services Administration for Children and Families, 2015). The process attempts to tie agency performance to three broad outcomes: (1) safety, (2) permanence and (3) well-being. This approach in some ways reflects the NOM approach developed in Canada; however, the fourth NOM outcome of family and social connections is subsumed into well-being (Austin, D'Andrade, & Lemon-Osterling, 2008; Austin et al., 2013; US Department of Health and Human Services Administration for Children and Families, 2015).

D Best-practice international case study

Although all the above mainstream approaches have either an outcome or an indicator which focuses on identity and culture of Indigenous children, none appears to emphasise this as important. The same is true of outcomes measuring family and social connections, which feature as either an outcome or an indicator in all three models, but do not appear to be given much weight. These two findings are concerning given the over-representation of Indigenous children in care and protection systems, and the growing movement, at least in Canada, of partnering with Indigenous organisations to provide services.

However, in 2011, an American study attempted to create a “culturally grounded participatory method to document the effectiveness of culturally specific services and to develop a process within community based groups for conducting evaluations based on good outcomes as defined by the cultural community served” (Cross et al., 2011, p. 96). This was an Indigenous-led approach to measuring outcomes that resulted in a set of outcomes that could be measured through a particular framework. From methodology to end point, this case study is considered best practice.

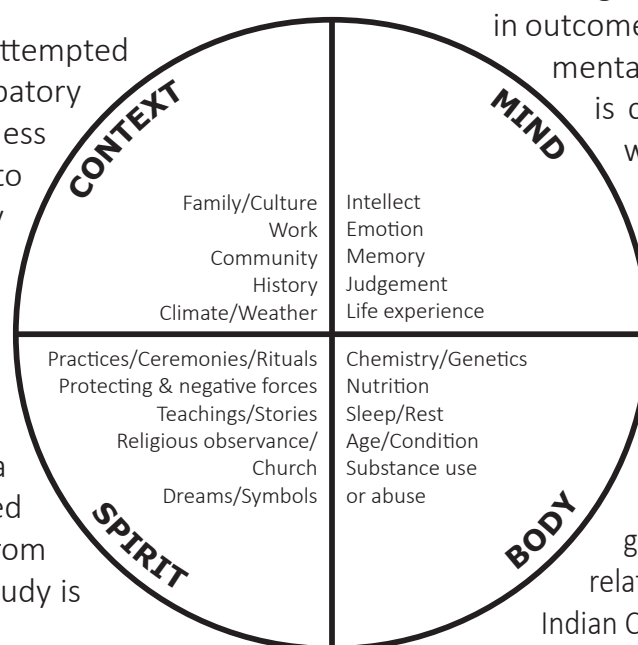


Figure 8. Relational model applied to an individual (Cross et al., 2011).

Much of the international literature on setting outcomes notes the challenge of this task. Developing performance indicators is not a neutral or technical exercise as they contain implicit values about what is important. It is likely to influence both resource allocation and the practice of agencies. In an Indigenous context, it is important to recognise that traditional performance indicators that account for material realities do not always fit with diverse Indigenous realities of interconnectedness, historical legacy and spirituality (Caxaj, 2015).

Although Cross et al.'s (2011) study is focused on mental health in Native American children and youth, it provides some useful concepts which could be utilised in the child welfare context of Aotearoa New Zealand. The study distinguishes between “evidence-based practice” and “practice-based evidence”. Evidence-based practice is used widely and is defined as the use of the current best evidence in decision-making. It is often used in setting outcomes (Cross et al., 2011). However, this study notes concerns with the use of evidence-based practice, especially in the context of measuring outcomes for Aboriginal communities. For example, newly developed practices will be excluded, because evidence-based practice does not distinguish between what is ineffective and what has not been sufficiently researched. Non-specific factors, such as empathy and warmth, are not measured, even though they are widely believed to be important in the mental health context. Similarly, traditional healing practices and therapies are excluded for lack of evidence and research (Bennet et al., 2009; Cross et al., 2011). One of the key issues the Native American community have with the use of evidence-based practice is who gets to decide what is effective. Measuring effectiveness is measuring the achievement of certain outcomes, but which outcomes are used to establish effectiveness is a matter of social justice (Cross et al., 2011).

Cross et al. (2011) advocate for the use of practice-based evidence in developing outcomes for measuring services in Native communities. Practice-based evidence is a research method that uses information gathered from service providers, families, youth, children and other stakeholders to identify effective interventions and outcomes (Cross et al., 2011). Information about desired goals and outcomes comes directly from the people receiving and providing the services, meaning cultural factors can be explicitly included in outcomes (Cross et al., 2011). For example, in the mental health context, practice-based evidence is critical for culturally diverse populations who may prefer traditional practices to conventional mental health services. For Native Americans, cultural strengths, such as family, community, spirituality, traditional healing practices and group identity are key components of physical and mental health outcomes (Cross et al., 2011).

The outcomes produced by this study were guided by a theoretical model based on a relational world view developed by the National Indian Child Welfare Association (see Figure 8).

The model is circular, in opposition to a linear concept of reality, in which the four quadrants are interrelated and where balance among these four quadrants leads to wellness (Cross et al., 2011). This model was used as the paradigm for collecting data to form outcomes. Data were gathered across all four quadrants, including tracking patterns across the different quadrants (Cross et al., 2011).

Focus groups including Native American youth, family members, elders and community partners were recruited and asked six questions: (1) What does success look like for Native American youth? (2) What is necessary to help support youth in achieving success in their lives? (3) What are the conditions that hinder a youth's progress towards success? (4) How do services contribute towards a youth's success? (5) Is there anything else services could be doing which is helpful? (6) Is there anything else to add?

The four quadrants were then used as probes to elicit more detailed responses (Cross et al., 2011). The responses were then collated to form outcomes (within the quadrants), based on the experiences of the people providing and receiving the service. These were used to provide the following definitions of youth success:

- **Context:**

- Healthy relationships: “following and/or being a positive Native American role model”
- Safety: “avoiding unsafe people and situations”
- Positive community relationships and contributions: “feeling meaningfully engaged, having purpose and value within one's community, family, or place of employment”
- Connecting with resources: “accessing health care”

- **Mind:**

- Coping: “understanding of spirituality for emotional well-being”
- Personal qualities: “self-acceptance, self-reflections, generosity, self-awareness, self-control”
- Personal capacities: “finding constructive, nonviolent ways to solve problems”
- Education: “education is the gateway to opportunities”
- Employment: “getting and keeping a job”
- Focus and determination: “being goal-orientated, visualizing the future”
- Cultural knowledge: “knowing tribal history and being able to move forward”
- Identity: “[youth] positively identify with their heritage”

- **Body:**

- Healthy lifestyle: “recognize wisdom to care for self and use knowledge”
- Fitness: “physical activities, such as hiking, rafting, walking, provide options for healthy living and positive experiences, respect for body”
- Health care: “be successful in alcohol and drug treatments”
- Housing: “long-term, safe, and stable housing”
- Finance: “paying bills on time, ability to manage, and being responsible”

- **Spirit:**

- Spiritual understanding and practices: “understanding and fulfilling seventh generational obligations” (oral traditions of several tribes hold that any decision or action today should be considered for its impact on the seventh generation yet to come)
- Connections to Native ancestry: “respect for creator, creation stories, where you come from”
- Knowledge and skills in traditional cultural practices: “connected to Native American side”
- Balance: “seven ways of walking – health, family generations, silence, joy, generosity, honouring the four directions, and compassion”
- Expressing Native identity: “positively identify with heritage, connect to culture.” (Cross et al., 2011, pp. 105–107)

Limitations of the study are acknowledged by the authors. For example, many of the respondents' comments reflected a generalised urban Indian experience “heavily influenced by plains, plateau, and coastal tribal cultures” (Cross et al., 2011, p. 107). However, despite the acknowledged limitations, the authors conclude that the “study findings provide a valuable picture of how Native American stakeholders conceptualised youth success and yield key information to guide members of the research team in identifying items to include in an assessment and case-planning tool” (Cross et al., 2011, p. 107). Further, the findings:

- Highlight participants' orientation to holistic concepts of success rather than the specific, narrowly defined outcomes usually measured in randomised controlled trials and used to assert the effectiveness of specific evidence-based practices; and
- Demonstrate the importance of culturally based indicators such as knowledge and skills in traditional cultural practices in assessing youth well-being and success.

The experiences of the countries surveyed above provide important relevant considerations for Aotearoa New Zealand as we now embrace the opportunity mandated in law to create a measurement system that positively works for Māori.

IX SECTION 7AA(2)(a) – A SUGGESTED APPROACH

Our tipuna had all the building blocks of a powerful future: confidence in themselves, their way of life, their dream and their right to fulfil it. (Ramsden, 1994)

The recent legislative amendments to the 1989 Act alone will not solve the inherent issues within the care and protection system for Māori. However, section 7AA(2)(a) provides an opportunity for a new approach based on Kaupapa Māori models to reduce disparities and measure outcomes. Such an approach will work to reduce systemic undermining of Māori tamariki and their whānau, whakapapa and whanaungatanga. Within Kaupapa Māori, and our tikanga, we have the building blocks for a powerful and bright future. We must continue to have the courage to use our own models to progress outcomes for our whānau, and assist the Crown to do the same.

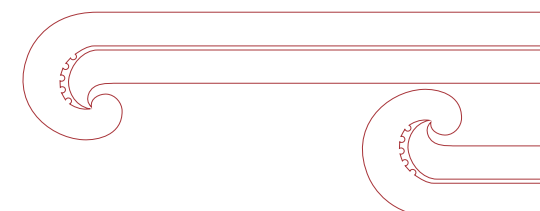
To recap:

- Section 7AA(2)(a) will require the chief executive of Oranga Tamariki Ministry for Children to ensure “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” (emphasis added).
- Section 7AA(5) will require reporting to the public, at least once a year, on those measures “including the impact of those measures in improving outcomes for Māori children and young persons who come to the attention of the department under this Act and the steps to be taken in the immediate future”.

To ensure that the obligations in section 7AA(2)(a) are met, we advocate these following five recommendations with urgency:

1. Measurement frameworks to reduce disparities for whānau need to be specific to Māori and grounded in Māori ways of being and living (see Kaupapa Māori frameworks and methods detailed in this paper).
2. Measuring disparity needs to be linked back to the revised purposes of the Oranga Tamariki Act.
3. Specifically, when measuring outcomes, the following 10 questions should be addressed:
 - Have whānau, hapū and iwi been assisted to prevent their children from suffering harm or offending? If so, how? If not, why not?
 - Have whānau, hapū and iwi been assisted at the earliest opportunity to fulfil their responsibility to meet the needs of their children?
 - Have whānau, hapū and iwi been assisted and empowered to effectively engage and participate in proceedings that involve their children? If so, how? If not, why not?

- Has the implementation of the Act provided a practical commitment to the principles of Te Tiriti o Waitangi?
 - Has mana tamaiti (tamariki), whakapapa and the practice of whanaungatanga been recognised? If so, how? If not, why not?
 - Have judges and other decision-makers demonstrated that they understand the meaning of mana tamaiti (tamariki), whakapapa and the practice of whanaungatanga?
 - Have the relationships for children with whānau, hapū and iwi been maintained and strengthened? If yes, how? If no, why not?
 - Have the policies and practices of the Department, by setting measurable targets, reduced the disparities for Māori children who came to their attention?
 - Have the policies and practices, and services had regard to mana tamaiti (tamariki) and the whakapapa of Māori children and the whanaungatanga responsibilities of their whānau, hapū and iwi?
 - Are there any Strategic Partnerships?
4. International models are useful for comparative purposes, but only those that have been Indigenous developed and Indigenous led.
 5. Courage, within ourselves and the Crown, will be required to ensure the opportunities contained in section 7AA are realised.



X FINAL WORDS

A great opportunity is represented by section 7AA(2)(a) but it will only be realised if outcomes are measured through Kaupapa Māori models to ensure Māori well-being is measured according to tikanga Māori. Establishing strategic partnerships with iwi and Māori organisations will provide another way to ensure that improving outcomes for tamariki Māori is targeted and developed in partnership.

The ability to transform care and protection for tamariki Māori is enormously welcomed but will require significant thought that we and others will continue to collectively work on to ensure that the opportunity is fulfilled to its greatest potential for the benefit of our tamariki mokopuna.

This is our societal opportunity to get this right. As Andrew Becroft has articulated, we need a system that makes sense to Māori. We certainly cannot afford to recreate the experience of a “half-baked, twinked-out [original 1989] Act, that never, ever, delivered on its promise” (Becroft, as quoted in Fuatai, 2017).

E tipu e rea mo ngā rā o tō ao

Ko tō ringa ki ngā rākau ā te Pākehā Hei ara mō tō tinana

Ko tō ngākau ki ngā taonga a ō tīpuna Māori

Hei tikitiki mō tō māhuna

Ko tō wairua ki tō Atua, Nānā nei ngā mea katoa

—Tā Apirana Ngata

Grow up and thrive for the days destined to you

Your hands to the tools of the Pākehā to provide physical sustenance,

Your heart to the treasures of your Māori ancestors as a diadem for your brow,

Your soul to your God, to whom all things belong

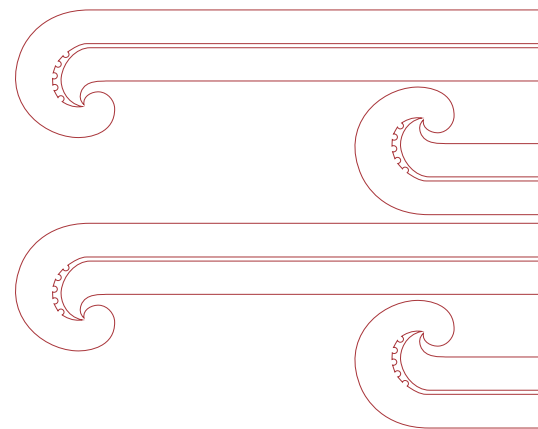
—Sir Apirana Ngata

ACKNOWLEDGEMENTS

We thank our outstanding team of research assistants who helped to bring this information together, namely Eru Kapa-Kingi, Laura MacKay and Nerys Udy. We thank those who generously and critically peer reviewed this work, including Natalie Coates, Lynley Cvitanovic and Professor Rosslyn Noonan.

This paper can be cited as follows:

Williams, T., Ruru, J., Irwin-Easthope, H., Quince, K., Gifford, H., (2019). *Care and protection of tamariki Māori in the family court system* (Te Arotahi Series Paper, May 2019 No. 01). Auckland: N.Z. Published by Ngā Pae o te Māramatanga New Zealand’s Māori Centre of Research Excellence.



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KEY LEGISLATION

- Children, Young Persons, and Their Families Act 1989 (original 1989 Act)
- Oranga Tamariki Act 1989 / Children’s and Young People’s Well-being Act 1989 (the revised 1989 Act)
- Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act)

ABOUT THIS RESEARCH PROJECT

This work is embedded in a Ngā Pae o te Māramatanga 12-month seed project entitled “Oranga Tamariki: New Knowledge for Evaluating and Empowering Whānau Well-being” that commenced in 2018. The primary research question is How will tikanga Māori empower the evaluation of the experience of Māori obligations in law to Te Tiriti o Waitangi? Our long-term objective is to bring new evaluative knowledge to empower the mana of whānau in crisis. The project is led by Associate Professor Khylee Quince, Professor Jacinta Ruru, Ms Tania Williams and Dr Amohia Boulton.

<http://www.maramatanga.co.nz/project/oranga-tamariki-new-knowledge-evaluating-and-empowering-wh-nau-well-being>

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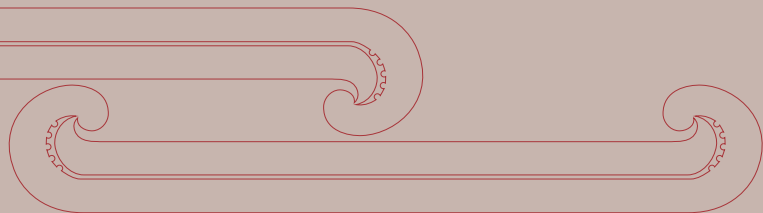
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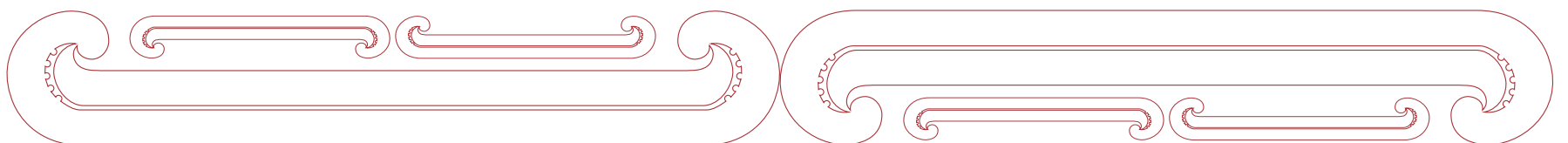
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Ngā Pae o te Māramatanga (NPM) is a Centre of Research Excellence, funded by the Tertiary Education Commission and hosted at the Waipapa Marae Complex at the University of Auckland, comprising 21 research partners and conducting research of relevance to Māori communities. Our vision is Māori leading New Zealand into the future. NPM research realises Māori aspirations for positive engagement in national life, enhances our excellence in Indigenous scholarship and provides solutions to major challenges facing humanity in local and global settings.

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ISSN: 2624-4462 (Print) ISSN: 2624-4470 (Online)

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