

“Whānau, hapū and iwi”

November 2017

“Whānau, hapū and iwi” has been embedded in care and protection and youth justice legislation for over 25 years but is frequently overlooked.

In the Oranga Tamariki Act 1989 / Children's and Young People's Well-being Act 1989, once all the legislative changes are in force (July 2019), the terms “**whānau, hapū, iwi**” or “**whānau, hapū and iwi**” will appear a total of 32 times.

The new terms “**mana tamaiti (tamariki)**”, “**whakapapa**” and “**whanaungatanga**” have been referred to as the three ‘pou’ of the legislation. The term “**mana tamaiti**” will appear a total of 7 times, “**whakapapa**” will appear 12 times, and “**whanaungatanga**” will appear 8 times.

The text in underline is already in force. [] means this text is to be replaced. [[]] means this text is to be deleted. All provisions will be in force by 1 July 2019 if not earlier by Order in Council.

Section 2 Interpretation

(1) In this Act, unless the context otherwise requires,—

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

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

Section 4 Purposes

(1) The purposes of this Act are to promote the well-being of children, young persons, and their families, **whānau, hapū, iwi**, and family groups by—

(a) establishing, promoting, or co-ordinating services that—

(i) are designed to affirm **mana tamaiti (tamariki)**, are centred on children's and young persons' rights, promote their best interests, advance their well-being, address their needs, and provide for their participation in decision making that affects them:

(c) assisting families, **whānau, hapū, iwi**, and family groups to—

(i) prevent their children and young persons from suffering harm, abuse, neglect, ill treatment, or deprivation or by responding to those things; or

(ii) prevent their children or young persons from offending or reoffending or respond to offending or reoffending:

(d) assisting families and **whānau, hapū, iwi**, and family groups, at the earliest opportunity, to fulfil their responsibility to meet the needs of their children and young persons (including their developmental needs, and the need for a safe, stable, and loving home):

(g) recognising **mana tamaiti (tamariki)**, **whakapapa**, and the practice of **whanaungatanga** for children and young persons who come to the attention of the department:

(h) maintaining and strengthening the relationship between children and young persons who come to the attention of the department and their—

(i) family, **whānau, hapū, iwi**, and family group;

Section 5 Principles to be applied in exercise of powers under this Act

(1) Any court that, or person who, exercises any power under this Act must be guided by the following principles:

(a) a child or young person must be encouraged and assisted, wherever practicable, to participate in and express their views about any proceeding, process, or decision affecting them, and their views should be taken into account:

(b) the well-being of a child or young person must be at the centre of decision making that affects that child or young person, and, in particular,—

(i) the child's or young person's rights (including those rights set out in UNCROC and the United Nations Convention on the Rights of Persons with Disabilities) must be respected and upheld, and the child or young person must be—

(A) treated with dignity and respect at all times:

(B) protected from harm:

...
(iv) **mana tamaiti (tamariki)** and the child's or young person's well-being should be protected by recognising their **whakapapa** and the **whanaungatanga** responsibilities of their family, **whānau, hapū, iwi**, and family group:

...
(vi) a holistic approach should be taken that sees the child or young person as a whole person which includes, but is not limited to, the child's or young person's—

(C) **whakapapa**;

...
(c) the child's or young person's place within their family, **whānau, hapū, iwi**, and family group should be recognised,

and, in particular, it should be recognised that—

(i) the primary responsibility for caring for and nurturing the well-being and development of the child or young person lies with their family, **whānau, hapū, iwi**, and family group:

(ii) the effect of any decision on the child's or young person's relationship with their family, **whānau, hapū, iwi**, and family group and their links to **whakapapa** should be considered:

(iii) the child's or young person's sense of belonging, **whakapapa**, and the **whanaungatanga** responsibilities of their family, **whānau, hapū, iwi**, and family group should be recognised and respected:

(iv) wherever possible, the relationship between the child or young person and their family, **whānau, hapū, iwi**, and family group should be maintained and strengthened:

(v) wherever possible, a child's or young person's family, **whānau, hapū, iwi**, and family group should participate in decisions, and regard should be had to their views:

(d) the child's or young person's place within their community should be recognised, and, in particular,—

(i) how a decision affects the stability of a child or young person (including the stability of their education and the stability of their connections to community and other contacts), and the impact of disruption on this stability should be considered:

(ii) networks of, and supports for, the child or young person and their family, **whānau, hapū, iwi**, and family group that are in place before the power is to be exercised should be acknowledged and, where practicable, utilised.

Section 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.

Section 13 Principles

(1) Every court or person exercising powers conferred by or under this Part, Part 3 or 3A, or sections 341 to 350, must adopt, as the first and paramount consideration, the [welfare and interest] well-being and best interests of the relevant child or young person (as required by [section 6] section 4A(1)).

2. In determining the well-being and best interests of the child or young person, the court or person must be guided by, in addition to the principles in section 5, the following principles:

(a) it is desirable to provide early support and services to—

- (i) improve the safety and well-being of a child or young person at risk of harm;
- (ii) reduce the risk of future harm to that child or young person, including the risk of offending or reoffending;
- (iii) reduce the risk that a parent may be unable or unwilling to care for the child or young person:

(b) as a consequence of applying the principle in paragraph (a), any support or services provided under this Act in relation to the child or young person—

- (i) should strengthen and support the child's or young person's family, **whānau, hapū, iwi**, and family group to enable them to—

(A) care for the child or young person or any other or future child or young person of that family or **whānau**; and

(B) nurture the well-being and development of that child or young person; and

(C) reduce the likelihood of future harm to that child or young person or offending or reoffending by them:

- (ii) should recognise and promote **mana tamaiti (tamariki)** and the **whakapapa** of the child or young person and relevant **whanaungatanga** rights and responsibilities of their family, **whānau, hapū, iwi**, and family group:

- (iii) should, wherever possible, be undertaken on a consensual basis and in collaboration with those involved, including the child or young person:

(e) assistance and support should be provided, unless it is impracticable or unreasonable to do so, to assist families, **whānau, hapū, iwi**, and family groups where—

- (i) there is a risk that a child or young person may be removed from their care; and
- (ii) in the other circumstances where the child or young person is, or is likely to be, in need of care and protection (for example, where a family group conference plan provides for assistance to be given to a child or parent to address a behavioural issue that may lead, or has led, to the child's removal from the family):

(f) if a child or young person is identified by the department as being at risk of removal from the care of the members of their family, **whānau, hapū, iwi**, or family group who are the child's or young person's usual caregivers, planning for the child's or young person's long-term stability and continuity of living arrangements should—

- (i) commence early; and
- (ii) include steps to make an alternative care arrangement for the child or young person, should it be required:

(g) a child or young person should be removed from the

care of the member or members of the child's or young person's family, **whānau, hapū, iwi**, or family group who are the child's or young person's usual caregivers only if there is a serious risk of harm to the child or young person:

(h) if a child or young person is removed in circumstances described in paragraph (g), the child or young person should, wherever that is possible and consistent with the child's or young person's best interests, be returned to those members of the child's or young person's family, **whānau, hapū, iwi**, or family group who are the child's or young person's usual caregivers:

(i) if a child or young person is removed in circumstances described in paragraph (g), decisions about placement should—

- (i) be consistent with the principles set out in sections 4A(1) and 5:

- (ii) address the needs of the child or young person:

- (iii) be guided by the following:

(A) preference should be given to placing the child or young person with a member of the child's or young person's wider family, **whānau, hapū, iwi**, or family group who is able to meet their needs, including for a safe, stable, and loving home:

(B) it is desirable for a child or young person to live with a family, or if that is not possible, in a family-like setting:

(C) the importance of **mana tamaiti (tamariki)**, **whakapapa**, and **whanaungatanga** should be recognised and promoted:

(D) where practicable, a child or young person should be placed with the child's or young person's siblings:

(E) a child or young person should be placed where the child or young person can develop a sense of belonging and attachment:

(j) a child or young person who is in the care or custody of the chief executive or a body or an organisation approved under section 396 should receive special protection and assistance designed to—

- (i) address their particular needs, including—

(A) needs for physical and health care; and

(B) emotional care that contributes to their positive self-regard; and

(C) identity needs; and

(D) material needs relating to education, recreation, and general living:

- (ii) preserve the child's or young person's connections with the child's or young person's—

(A) siblings, family, **whānau, hapū, iwi**, and family group; and

(B) Wider contacts:

- (iii) respect and honour, on an ongoing basis, the importance of the child's or young person's **whakapapa** and the **whanaungatanga** responsibilities of the child's or young person's family, **whānau, hapū, iwi**, and family group:

- (iv) support the child or young person to achieve their aspirations and developmental potential:

- (k) if a child or young person is placed with a caregiver under section 362, the chief executive, or, if applicable, a body or an organisation approved under section 396, should support the caregiver in order to enable the provision of the protection and assistance described in paragraph (j).

164 Further provisions relating to lay advocate

(1) The principal functions of a lay advocate appointed under section 163 are as follows:

...
(b) to represent the interests of the child's or young person's **whānau, hapū and iwi** (or their equivalents (if any) in the culture of the child or young person) to the extent that those interests are not otherwise represented in the proceedings.

Section 208 Youth Justice Principles

A court or person exercising powers under this Part, Part 5, or sections 351 to 360 must weigh the 4 primary considerations described in section 4A(2).

[Subject to section 5, any court which, or person who, exercises any powers conferred by or under this Part or Part 5 or sections 351 to 360 shall be guided by the following principles:]

When weighing those 4 primary considerations, the court or person must be guided by, in addition to the principles in section 5, the following principles:

(b) [[the principle]] that criminal proceedings should not be instituted against a child or young person [[solely]] in order to provide any assistance or services needed to advance the [welfare] well-being of the child or young person, or their family, [whānau,] **whānau, hapū,** or family group:

(c) [[the principle]] that any measures for dealing with offending by children or young persons should be designed —
(i) to strengthen the family, **whānau, hapū, iwi,** and family group of the child or young person concerned; and
(ii) to foster the ability of families, **whānau, hapū, iwi,** and family groups to develop their own means of dealing with offending by their children and young persons;

(f) [[the principle]] that any sanctions imposed on a child or young person who commits an offence should —
(i) take the form most likely to maintain and promote the development of the child or young person within their family, **whānau, hapū, iwi,** and family group;...

Section 238(1)(d) Custody of child or young person pending hearing

(1) Where a child or young person (who for the purpose of paragraph (f) is limited to a young person who is aged 17 years) appears before the Youth Court, the court shall—

...
(d) subject to section 239(1), order that the child or young person be detained in the custody of the chief executive, an **iwi** social service, or a cultural social service;

Section 251 Persons entitled to attend family group conference

(1) Subject to subsection (2), the following persons are entitled to attend a family group conference convened under this Part:

...
(g) any barrister or solicitor or youth advocate or lay advocate representing the child or young person:

Section 327 Functions of Lay Advocate

The principal functions of a lay advocate appointed under section 326 are as follows:

(a) to ensure that the court is made aware of all cultural matters that are relevant to the proceedings:

(b) to represent the interests of the child's or young person's **whānau, hapū and iwi,** (or their equivalents (if any) in the culture of the child or young person) to the extent that those interests are not otherwise represented in the proceedings.

Section 386AAC Principles to be applied when assisting young person to move to independence

A person who is performing functions or exercising powers under sections 386AAD to 386C to assist a young person to move to independence must be guided by, in relation to a young person aged under 18 years, the principles in section 5, in relation to a young adult aged 18 years or over, the principle in section 5(1)(a) only, and in both cases the following principles:

...
(d) family, **whānau, hapū, iwi,** family groups, and communities are to be supported to help the young person move to independence:

Section 396 Approval of **iwi** social services, cultural social services, and child and family support services

(1) The chief executive may, from time to time, on application made to the chief executive, approve any incorporated body (being a body established by an **iwi**) as an **iwi** social service for the purposes of this Act.

(2) The chief executive may, from time to time, on application made to the chief executive, approve any incorporated body (being a body established by 1 or more cultural groups (not being **iwi**) within New Zealand) as a cultural social service for the purposes of this Act.

(3) The chief executive may, from time to time, on application made to the chief executive, approve any organisation or body (including a children's home), whether incorporated or unincorporated, as a child and family support service for the purposes of this Act.

(4) The chief executive may grant an approval under this section subject to such conditions as the chief executive thinks fit.