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NGĀ KŌTI RANGATAHI

News, stories and events from the Rangatahi Courts and Pasifika Courts

NGĀ PITO KŌRERO
In this issue

TUHINGA O MUA | Editorial

Whakauru: Kaiwhakawā Louis Bidois
Te Arawa, Ngati Rangiwewehi, Ngararanui

Ko Tiheia me Ngongotahā ngā maunga
Ko Awahou me Waiteti ngā awa
Ko Te Arawa te waka
Ko Ngati Rangiwewehi me Ngararanui ngā iwi
Ko Tarimano me Waiteti ngā marae
Ko Louis Bidois ahau

It is a privilege to take on the role of National Rangatahi Court Liaison Judge in the Youth Court. This follows the appointment of Heemi Taumaunu as Kaiwhakawā Matua o te Kōti-a-Rohe o Aotearoa in November 2019.

In 2020 Ngā Kooti Rangatahi will be my focus. I look forward to updating you from time to time on my observations and experiences through this pānui.

Please feel free to share your stories, news, updates and events for future editions of this pānui by emailing: courtintheact@justice.govt.nz

TUHINGA O MUA | Editorial

You will remember that the traditional Māori approach to harm caused was to balance the wrong doing and re-establish the "mana" (respect) of those damaged. It was inherently victim-focused and therapeutic. In the long term, improvement in housing, health, education, employment and poverty will all play an effective role in reducing the rates of Māori entering the criminal justice system.

But primarily we must reverse the poverty of spirit, the poverty of hope, the poverty of opportunity and the poverty of culture which presently exists.

That prospect also motivates those Māori who can help, to work for a change in that entrenched view of many Māori people – "who cares - why should I respect the rule of law if the rule of law doesn't respect me".

Te Kooti Rangatahi, Pasifika Courts and the Matariki Courts are examples of ways in which we can work towards this. Over the last 10 years our court processes have undergone significant adjustment through other initiatives too. There has been a greater focus on the need for judicial diversity. The Māori language is now required to be used in opening and closing court. Swearing in ceremonies for new judges are preceded by pōwhiri (the traditional Maori welcome ceremony). Judges taking up residence at a new court are accompanied by others and a pōwhiri is held for them in their new Court.

I am fortunate to regularly see the benefits of Te Kooti Rangatahi, Pasifika Courts and the Matariki Court. The significant change in attitude, response, engagement that benefits all parties through these processes has been recognised by both qualitative and quantitative evaluations. These initiatives reflect, at least, a change in the level of respect for Māori cultural values and processes. Not all of our rangatahi in Aotearoa have the privilege of attending te Kooti Rangatahi, and we should encourage the sharing of our learnings from these courts with our whānau in other areas. Where there is an opportunity to attend te Kooti Rangatahi, I encourage our tamariki and rangatahi to seize that opportunity.

Nākū iti noa nā,

Judge Bidois
National Rangatahi Court Liaison Judge

Reopening of Te Poho o Rāwiri Marae, Gisborne

The first ever sitting of a Rangatahi Court in Aotearoa, New Zealand, took place at Te Poho o Rāwiri marae, Gisborne, on 30 May 2008. From that time onwards, the Rangatahi Court continued to hold fortnightly sittings at Te Poho o Rāwiri marae. Approximately three years ago, Te Poho o Rāwiri marae was closed for the purpose of rebuilding the Dining Hall, "Hine i tuhia ki te rangi". During that time, the Rangatahi Court held fortnightly sittings at the whare nui at Tūranga Ararau Training Establishment in Gisborne.

Te Poho o Rawiri marae was re-opened in January 2019. On Friday 1 March 2019, the Rangatahi Court recommenced fortnightly sittings at Te Poho o Rāwiri marae. The pōwhiri for the sitting was supported by the attendance of students from two local kura kaupapa. Over 100 junior and senior students from Te Kura Kaupapa o Waikirikiri performed a haka powhiri and performed waiata tautoko for the hau kāinga speakers. More than 20 senior students from Te Kura Kaupapa o Ngā Uri a Māui came onto the marae with the Rangatahi Court and performed waiata tautoko for those who spoke on behalf of the visitors.

Mā te tika, mā te pono, me te aroha

Two taonga were brought onto the marae by the Rangatahi Court. The first taonga was presented to the marae as a taonga pupuri mauri for the Rangatahi Court held at Te Poho o Rāwiri marae. The taonga is in the form of a manaia and was carved by Mr Ted Morrell. The tukutuku panel that forms part of the taonga was created by Mrs Kuia Morrell.

The stakeholders of the Gisborne Rangatahi Court and students from Te Kura Kaupapa Māori o Ngā Uri ā Māui.

The name of the taonga is "Mā wai rā e taurima?" and comes from the waiata tangi composed by Henare Teōwai on occasion of the passing of Pine Tamahori. The title of the waiata tangi means, "Who will now care for the marae?". The waiata tangi contains this response, "Mā te tika, mā te pono, me te aroha". This means that the care for the marae will be guided by the underlying principles of "doing the right thing at the right time for the right purpose, having faith and trust, and extending love and respect for oneself and others".

These underlying principles have been adopted by the Rangatahi Courts in the following context:

"Rangatahi Courts encourage rangatahi and their whānau to do the right thing, at the right time for the right purpose;

All involved must develop faith and trust that a rangatahi can change his or her attitude and behaviour;

And all involved must extend love and respect ."

(Continued on next page.)

Continued from page 3: The Manaia / Taniwha depicted on the carving shows the relationship of Turanganui-a-Kiwa and relates to the three rivers Taruheru, Waimata and the Turanganui, and to the three elements of Tika, Pono and Aroha.

On the back of the taonga, the pattern of "Te Ara Poutama o Porourangi" is depicted in a tukutuku panel. This pattern represents the "steps or stairways to achievement". This is interpreted in the Rangatahi Courts as the pathways (FGC plans) that are put in place to guide rangatahi and their whānau towards a positive pro-social future.

Pōwhiri for Kaiwhakawā Greg Hikaka at Owae Mārae

On 22 March 2019, Kaiwhakawā Greg Hikaka was welcomed onto Owae Mārae to mark his return to his tūrangawaewae in Taranaki. A large contingent of his community travelled from the shores of Te Manukanuka o Hoturoa to take part in the pōwhiri, and to share in his new place with Te Atiawa. This turnout was a credit to his mana, and gratitude was expressed for all the work that Judge Hikaka has done for his community in Manurewa.

Kaumātua and Kuia who had travelled from Manurewa also wished to express their thanks to Owae Mārae for the hospitality and welcome. They wish him all the very best for his time in Taranaki.

HE WHAKAHONORE | Special Mention

Presentation of a Tokotoko in recognition of the 10 year anniversary for Te Kooti Rangatahi

Kaiwhakawā Heemi Taumaunu was presented with a Tokotoko by Owae Mārae in recognition of the 10-year anniversary of Te Kooti Rangatahi.

This Pūriri has historical significance to Owae Mārae. It was planted by our elders here in Waitara on the return from Parihaka in the 1880s. A branch was destroyed in bad weather in 2011 and only a small piece was able to be recovered. The branch was surely a strong sapling on this same tree when Ngāti Porou, under the leadership of Tā Apirana Ngata, directed the building of the Wharenui, Te Ikaroa A Maui in the 1930s.

E Ngaa Hua Waru o te Wairua te ingoa ō tāua nei Tokotoko, te whakarāpopoto Ko Huawaru. Ko ngā hua e waru e whai ake nei. The name of this Tokotoko is Huawaru, for strength of spirit.

He Pūriri Te Rakau

AROHA	love
MAUNGAARONGO	peace
KAHA	strength
MANAWANUI	courage
NGAAKAU MAAHAKI	humility
HARIKOA	happiness
NGAAKAUNUI	commitment
WHAKAUTENGIA	respect

Ko Ngā Whakairo ō ia wāhanaga

Ko ngā ingoa ō ia wahanga ō te tokoko nei.

Ko Tūpuna *Ko te Tairāwhiti* *Ko te Taitokerau* *Ko te Waipounamu* *Ko te Taihauāuru*

HE WHAKAHONORE | Special Mention

Presentation of a rug in recognition of the 10 year anniversary for Te Kooti Rangatahi

Judge Taumaunu was also presented with a special rug from Whānau Mills, pictured below with Tracey Mills.

The details of the rug are as follows: hand spun and knitted by Val Knight, Tinwald, Ashburton. Romney Wool from "Montrose Blacks. Coloured flock of Michelle Bower at Pleasant Point, South Canterbury. Wool washed and carded by Leo Ponsonby of "Greenacres", The Tia Tapu Carding and Spinning Company, who is a Black and Coloured Sheep breeder near Rolleston in Canterbury.

Manurewa Rangatahi Court Visit

This picture was taken at Manurewa Rangatahi Court in July in 2019. An Australian visitor asked to observe on CJ Lauritsen's recommendation. Her name is Annabel Mornement from the Victoria Judicial College. She was quite the star. She googled how to do a pēpeha the night before court and then recited it with beautiful pronunciation.

In the picture from the left are Sergeant Theresa Bishara, Matua Taipari Kepa, our Manuhiri Annabel, our registrar Sammie, Judge Eivers, Sergeant Gaylene Rice, Lloyd Lundon of Oranga Tamariki, and whaea Te Miharo Munro.

HE WHAKAHONORE | Special Mention

Completion of plan at Pasifika court Te Atatu

These photos were taken at Pasifika court Te Atatu in July. The rangatahi, in the middle, had finished his plan and he and his mother presented the cloth that is being held up, and the fine mat on the table, to the elders.

Judge La Verne King's swearing-in ceremony

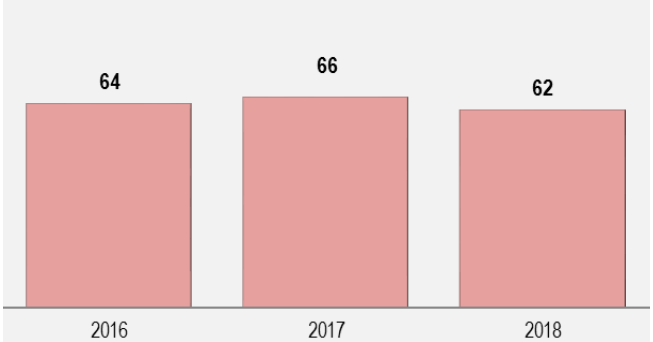
In May 2019, Judge La Verne King was sworn in as the new District Court Judge for the Far North. Judge King has spent over 30 years practising law, including helping to establish New Zealand's first all-female Māori and Pasifika law firm. Hundreds of people came from all over to celebrate this special ceremony.

NGĀ TATAURANGA | Latest Statistics

The following is based upon 2019 Youth Justice Key Indicators produced by Oranga Tamariki and MOJ and the 2018 Youth Court Annual Report.

Youth Court statistics

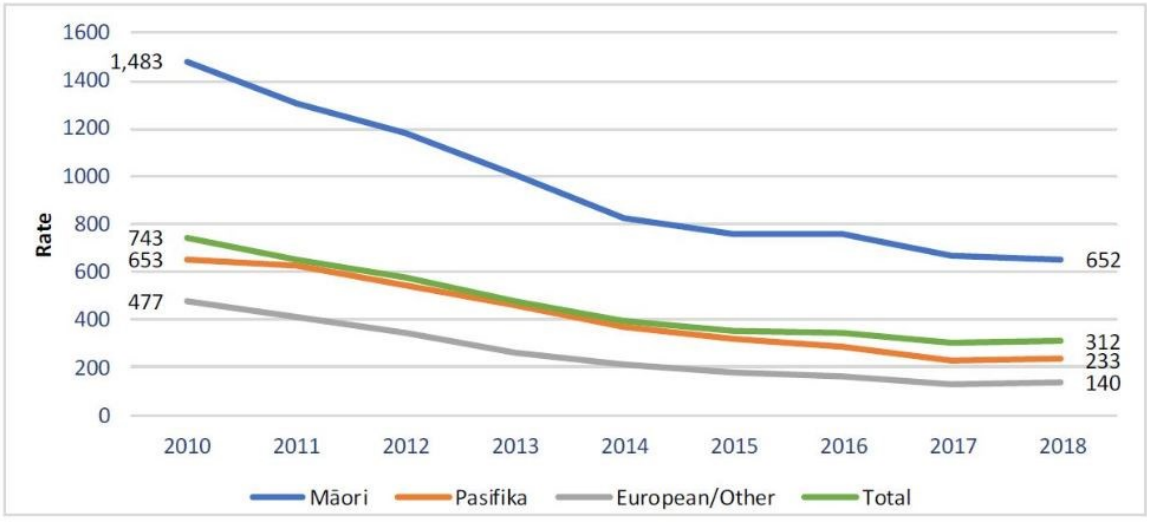
- 24% of the 10-16 year old population is Māori.
- In 2018, 62% of young people who appeared in the Youth Court identified as Māori, down from 66% in 2018.
- Overall numbers in the Youth Court continue to decrease. This has been driven by a 34% decrease in new Youth Court Category 2 cases and a 20% decrease in Category 3 cases comparing 2016 to 2018.
- However, rates of rangatahi Māori and Pasifika are decreasing at a lower rate in comparison to other ethnicities.



Graph 1: Percentage of young people appearing in the Youth Court who identify as Māori

Ngā Kōti Rangatahi

- There were a 1,486 appearances in ngā Kōti Rangatahi and 337 in Pasifika Courts in 2018 (total events).
- A total of 308 young people nationwide had their first appearance at a te Kōti Rangatahi in 2018 (unique appearances).
- From 30 May 2008 to 1 January 2019, 2,812 young people have benefited from enhanced processes in Rangatahi and Pasifika Courts.
- On average, 4 young people appeared at each sitting of Rangatahi and Pasifika Courts.
- The proportion of 16-year old Māori with a proved Youth Court case who reoffended within 12 months fell from 57% to 45% from 2015/16 to 2016/17.
- The number of young Māori remanded in custody fell from 418 to 354 between 2016-2018.



Graph 2: Offending rates per 10,000 population for young people aged 14-16 (YJI 1.1)

MEASURING THE SUCCESS OF TE KOOTI RANGATAHI AND TE KOOTI MATARIKI:

If recidivism rates are a 'blunt instrument' - can the use of tikanga as common law heal our communities intrinsically reducing offending—and should the jurisdiction be extended?

An evaluation of the success of Te Kooti Rangatahi and Te Kooti Matariki

Author: Dr Valmaine Toki, Associate Professor and Faculty Chair at Te Piringa, Faculty of Law, University of Waikato.

Abstract: This paper is the result of research supported by the University of Waikato Strategic Investment Fund. The grant along with permission from the Ministry of Justice Judicial Research Committee enabled the researchers the rare privilege of interviewing marae court Judges.

The goal of this research was to scope the viability of a marae-based court for adult offenders and determine whether a Te Kooti Rangatahi and Te Kooti Matariki tikanga-based framework could be extended to adult offenders within criminal and/or civil jurisdictions (e.g. the Family Court). The broader aim of the research focused on ameliorating the disproportionate offending rates of Māori within the criminal justice system. To contextualise this approach, examination of comparative jurisdictions, such as a the Navajo Tribal Courts were considered. To inform the research a set of interviews with Judges who preside over Te Kooti Rangatahi were undertaken, together with non-participant observations of Te Kooti Rangatahi and Te Kooti Matariki.

The research ultimately found that continuation of the jurisdiction to include adult offenders appears to be a natural progerssion. There is a preference for utilising the principle of aroha to empower offenders as opposed to an adversarial system focused on punishment, and employing such processes to heal in regard to family issues and eventually civil issues is also plausible. While several challenges for tikanga common law exist, Te Kooti Rangatahi and Te Kooti Matariki provide a very postive ground to build upon.

This paper is available on request, please contact: courtintheact@justice.govt.nz

KA MATE, KA ORA RĀNEI? ORANGA TAMARIKI ACT NOT ENOUGH TO ADDRESS MĀORI OVERREPRESENTATION IN STATE CUSTODY AND OUT OF HOME PLACEMENTS—A WAY FORWARD THROUGH CROWN-MĀORI PARTNERSHIP?

Dissertation for partial fulfilment of LLB (Hons), Faculty of Law, Victoria University of Wellington 2018

Author: Eru Ruanui Tia Kapa-Kingi

Abstract: In this paper, the author critically analyses some of the incoming amendments to the Oranga Tamariki Act 1989. Those amendments were enacted in 2017 with one of the objectives being to improve Māori representation generally in both state care and youth justice in New Zealand. The author focuses on two amending provisions. These relate to duties of the Chief Executive Oranga Tamariki in relation to te Tiriti o Waitangi, and new terminology and definitions being introduced including "mana tamaiti', 'tikanga Māori', 'whakapapa' and 'whanaungatanga'. The author asserts that those provisions are insufficient in achieving the intended purpose.

The paper concludes that the law should be revised and improved. Also, that it should thereby be used to devolve power to allow Māori to provide services and make decisions as they are best placed to do so, whilst maintaining some Crown responsibility based on the principle of partnership. This would better achieve the reduction of tamariki Māori in state custody and out of home placements. Ina pērā, kāhore e kore kua ora pai te iwi Māori ki tua o ākengokengo. Nō reira, ki te hoe!

Eru Kapa-Kingi's related essay can be found on page 11. For the full dissertation, please contact: courtintheact@justice.govt.nz

HE TAONGA TE TAMARIKI Eru Kapa-Kingi

Sir Edward Taihakurei Durie student essay competition 2018

Eru Kapa-Kingi

Eru hails from Te Aupōuri, Ngāti Kahu Ki Whangaroa, Ngāti Mahuta and Te Whānau-A-Apanui. He is in his final year at Victoria University completing a conjoint LLB(Hons)/BA (majoring in te reo Māori). Eru wrote his dissertation on the recent amendments to the Oranga Tamariki legislation, specifically, the newly added tikanga Māori-based terms and the partnership duty as derived from Te Tiriti o Waitangi. He is driven by the notion of empowering and decolonising te iwi Māori to return to a point of cultural prosperity. Hence why he chose to base his research on Oranga Tamariki - Eru knows just how important the role of tamariki (children) and rangatahi (youth) is in the future of te ao Māori. It is also vital we as Māori take part in the conversations surrounding the operation of Oranga Tamariki.

He taonga te tamariki

Tamariki, rangatahi and whānau Māori have long suffered at the hands of a system which rejects their right to exercise power for their own best interests through a uniquely Māori framework. Since the 1980s Māori have called upon the state system to provide the necessary tools to look after their own. This desire is yet to be realised. However, this essay will explore an amendment that will affect the operation of the Oranga Tamariki Act 1989 (the Oranga Tamariki Act). From 1 July 2019 at the latest, a new Treaty of Waitangi-based duty, owed by the Chief Executive of Oranga Tamariki Ministry for Children (Oranga Tamariki), will come into force. This new duty was introduced by s 14 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act). This essay will analyse this forthcoming duty and outline its significance to Māori.

Overall, the new duty, although inhibited by the absence of a direct obligation on the Chief-Executive, has the potential to give life to a genuine Crown-Māori partnership in the oranga (wellbeing) of tamariki Māori. This potential is through the devolving of power to iwi and other Māori organisations in state care and youth justice where Māori are involved. Such a devolution of power will improve the situation for Māori and could lead to a reduction of the gross over-representation of Māori in the systems of state care and youth justice.

Kua muia e te Māori – the over-representation of Māori

The Ministry of Social Development has noted the over-representation of Māori children and young people in the state system and further noted that this over-representation has worsened over time. In 2001, Māori made up 45 percent of Oranga Tamariki's total client group, being 55 percent of those in state care and 48 percent of those in youth justice. Presently, 60 percent of children in state care are Māori.[1] This is despite the fact that only 30 percent of all children born in New Zealand now are Māori.[2]

As to the youth justice system, Māori currently comprise 60 percent of all young people involved, and 70 percent of young persons placed in secure youth justice residences, while only making up 25 percent of children and young people aged 10 to 16 years in New Zealand.[3] Māori-related figures have also increased in other respects. Up to 40 percent of initial intake inquiries, and 50 percent of all investigations involve Māori.[4]

These statistics highlight the grossly disproportionate representation of Māori in the system. The fact that these figures have only increased since 1989 reinforces that the legal regime introduced at that time has failed Māori and achieved nothing in reducing these statistics.

He ture hou – the new duty

Generally, the amendments to this regime are intended to overhaul the old system.[5] The Expert Panel which contributed to the policy of the amendments reported that a fundamental shift in the original scheme is necessary to achieve better outcomes for vulnerable children, especially Māori.[6] The Panel also stated that the social sector should recognise the value in the Treaty of Waitangi partnership within its new operating model.[7]

Specifically, under s 7AA, the Chief Executive must meet three duties: The Chief Executive must ensure that:

Policies and practices of Oranga Tamariki that impact on the well-being of children and young persons have the objective of reducing disparities by setting measurable outcomes for Māori.[8]

Policies, practices, and services 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.[9]

The department seeks to develop strategic partnerships with iwi and Māori organisations (including iwi authorities), to innovate proposals and set expectations to improve outcomes for Māori, as well as provide opportunity to delegate functions under the Oranga Tamariki Act to appropriately qualified people within those organisations.[10]

The purpose of s 7AA is to recognise and provide for practical commitment to the principles of the Treaty. The first two parts of the duty are directed at decisions of policy, practice and service, while the last part is directed at forming partnerships with iwi and Māori organisations to better provide for tamariki Māori (the Partnership Duty).

The Partnership Duty and its significance to Māori is the focus of this essay. This essay will show that the Partnership Duty could lead to positive developments in practice, which in turn would reduce the over-representation of tamariki Māori in state care and youth justice.

However, it's important to note that the section's statutory wording poses some threat to its effectiveness. This threat is because the duties under s 7AA(2), although mandatory, are drafted in weak terms, thereby potentially diluting their effectiveness. The Chief Executive is only bound to "seek to develop" strategic partnerships with iwi, Māori organisations and iwi authorities. By simply contacting these entities with a view to forming a partnership, the Chief-Executive would discharge this duty. The Chief Executive is not statutorily bound to see through the formation, nor the continuation, of a strategic partnership with any of these entities, nor the delegation of power. The Human Rights Commission criticised this aspect of the Partnership Duty, claiming it made it nebulous and recommended strengthening the provision by placing a more direct duty to develop and implement strategic partnerships.[11] The state needs to remedy these weaknesses in order to guarantee better social outcomes for whānau and tamariki Māori.

Nonetheless, the Partnership Duty has significant potential to reduce the number of Māori in state care and youth justice, assuming the Chief Executive is proactive in pursuing Crown-Māori partnerships with Māori entities under s 7AA. The value of this duty rests on importing the expertise and natural attributes of iwi and other Māori organisations who are best placed to deal with tamariki and whānau Māori.[12] The law has never made way for Māori to manage their own affairs in this area, despite the gross over-representation of Māori. In other words, a *by Māori, for Māori* model has never been realised.

However, this Partnership Duty could be the means to achieve such a model.

Ki tua o te awe māpara – looking to the future

The Partnership Duty has the potential to address fundamental issues with the state care and youth justice system which unduly affect Māori. Namely, it can respond to the fact that the system is not designed in a way that understands Māori ways of being. This section will explain how the Partnership Duty might be used to reduce the over-representation of tamariki Māori in Oranga Tamariki's care, demonstrate its significance for te iwi Māori, and outline what a Crown-Māori partnership might look like.

Oranga Tamariki could use the Partnership Duty provision to devolve more control to iwi or other Māori organisations who are willing and able to provide services in the care of tamariki Māori and the sentencing and rehabilitation of young Māori offenders. Specifically, s 7AA(2)(c)(iv) allows the Chief-Executive to delegate functions under the Oranga Tamariki Act to Māori entities. This power of delegation would be the primary means of devolving these powers and functions.

Greater scope ought to be provided to devolve state power to Māori who are willing and able to exercise such power, particularly in policy and decision-making about the welfare of tamariki and rangatahi offenders because Māori entities can provide for and deal with tamariki and rangatahi within a uniquely Māori and more culturally-appropriate framework. This submission echoes that of the New Zealand Māori Council in its scrutiny of the 2017 Act,[13] and reflects the aspirations of the Puao-te-ata-tu Report of 1988 which stated that:[14] the state should recognise that Māori are best placed to exercise power, provide services, and form policy for the betterment of Māori.

However, devolution can and should be based on the principle of partnership because the state should not relieve itself entirely of its duty to provide for the equality of Māori, as promised under Article III of the Treaty.[15] The Crown must provide the infrastructure and resources to iwi and Māori organisations for this proposed framework.

Contemporary examples

State and judicial services contain current examples of where the recognition of mana Māori has been realised leading to better outcomes for Māori. One example is the Rangatahi Court system, an initiative of the judiciary. This system is a form of Youth Court which often takes place on marae and implements tikanga Māori process.[16] According to a 2012 report by the Ministry of Justice, this Court has been successful in:

- engaging young Māori;
- encouraging more positive behaviour by young Māori; and
- connecting young Māori with their wider community and building a sense of Māoritanga within the rangatahi who participate.[17]

This Court provides a good example of more culturally-appropriate practice influencing real change.

The Whānau Ora initiative, established in 2010 by the New Zealand Government, provides a platform for whānau Māori to become more self-managing and independent.[18] Implementation powers were given to Te Pou Matakana, and Te Pūtahitanga o Te Waipounamu (both Māori commissioning agencies) to invest directly into Māori communities across Aotearoa. This initiative was formed as the state recognised that these agencies are better placed to make funding decisions for Whānau Ora provider collectives, iwi and marae.[19] There is also evidence that Whānau Ora has delivered many positive outcomes for whānau Māori.[20]

These examples provide evidence of two things. First, structures that are more cognisant of Māori ways of being work better for Māori. Second, Māori are best placed to provide for and make decisions which involve Māori and, therefore, Māori should not be inhibited from doing so. Section 7AA could be used to build on and empower this type of service.

Recent cases also show there is a growing willingness by the Crown to devolve decision-making power and resources to iwi Māori in state services involving tamariki and rangatahi Māori. In 2012, Ngāi Tūhoe formed a partnership with the Crown as part of the settlement of their historical Treaty claim, whereby specific agencies of the Crown recognised the mana motuhake of Tūhoe. This partnership effectively allows Tūhoe to provide services to their own people, some of which are provided by Oranga Tamariki within state care and youth justice.[21] This instrument marks the beginning of devolution of authority to iwi Māori and the Crown's realisation that iwi Māori and like entities are best placed to provide for their constituencies.

Another Crown-Iwi partnership example concerns Ngāti Tūwharetoa, who have formed a relationship with Oranga Tamariki and the Police whereby Tūwharetoa provide advice on major issues involving whānau Māori in the area, as well as guidance on the formation of strategies in working with these whānau in general practice.[22] This relationship has been positive for all parties involved and shows the benefits of the Crown and iwi working together.

A partnership framework

The devolution of power and its wider framework will be discussed in greater detail below, drawing inspiration from the examples above and balancing what will be most effective and representative of partnership.

Iwi or other Māori organisations who are willing and able should be delegated functions and powers through the Partnership Duty provision within state care and youth justice. These powers and functions devolved from Oranga Tamariki would be limited to cases where tamariki Māori are involved. An iwi or other Māori authority receiving these powers, for example, could take the form of a social services arm as a part of a wider post-settlement governance entity or other type of Māori organisation. There could also be Māori organisations set up specifically to exercise these powers and functions, for example, an entity which represents urban Māori. Oranga Tamariki should fund the creation and maintenance of the infrastructure for Māori entities to exercise these functions and powers, with the Crown providing administrative support.

This devolution of power recognises the utmost importance of tamariki to Māori. It also recognises that Māori are best placed to make these decisions as well as consider tikanga Māori in exercising these functions. This model will go further in reducing the disproportionate harms suffered by Māori within the state care and youth justice system as well as striking a balance between practice on the ground and having an appropriate legal infrastructure. It also reflects the principle of partnership as the Crown would maintain a vital support role.

As shown, recent developments in government policy suggest that the legal and political recognition of rangatiratanga[23] Māori is becoming a reality. However, some oppose devolution, arguing these responsibilities should remain with the Crown. The Hon Pita Sharples during his time as Minister of Māori Affairs stated that devolution of power to iwi reflects badly on the state, criticising it as "symptomatic of a failure of successive governments to provide for the social needs of iwi and Māori".[24]

However, so long as the principle of partnership remains central, optimal outcomes can be achieved. Further, the Crown will not be fully relieved of its duties to Māori.

A power shift is also in the best interests of Māori, as history shows the Crown has been failing, and is likely to continue doing so. Mā te iwi Māori kē tātou anō e whakaora. Māori and only Māori will improve our current situation. There has been a long and continuing failure by the Crown in respect of tamariki and rangatahi Māori. A new approach where the Crown can devolve authority to Māori to provide services and make decisions involving tamariki and rangatahi Māori, whilst also providing resources and support to uphold the principle of partnership, is required for real change. This legal development can make this a reality. It is true the Crown holds primary responsibility. However, this does not preclude the opportunity for the Crown and Māori to work together for the oranga of tamariki and rangatahi Māori through s 7AA.

Hei whakatepe – conclusion

This essay has shown the significance of new duties that will be owed by the Chief Executive of Oranga Tamariki for te iwi Māori from July 2019 under s 7AA of the Oranga Tamariki Act. It potentially opens a new path, making way for the rangatiratanga of Māori entities to exercise powers and functions concerning tamariki and rangatahi Māori through a Crown-Māori partnership model. This model will be more effective in the endeavour to improve the situation for Māori and thereby Aotearoa whānui[25] in state care and youth justice.

For too long the Crown has rejected the mana of the wider Māori collective in respect of caring for and nurturing the younger generations. This neglects the importance of those generations to Māori. Kei wareware, he taonga te tamariki.

Notes

[1] The Modernising Child, Youth and Family Panel *Modernising Child, Youth and Family Expert Panel: Interim Report* (Ministry of Social Development, Version 1.0, July 2015) at 8.

[2] At 34.

[3] The Modernising Child, Youth and Family Panel *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015) at 49.

[4] Ministry of Social Development *Regulatory Impact Statement Investing in Children: Foundations for a child-centred system* (New Zealand Government, August 2016) at [49].

[5] The Modernising Child, Youth and Family Panel *Modernising Child, Youth and Family Expert Panel: Interim Report*, above n 3, at 79.

[6] At 8.

[7] At 61.

[8] Oranga Tamariki Act 1989, s 7AA(2)(a).

[9] Section 7AA(2)(b).

[10] Section 7AA(2)(c).

[11] New Zealand Human Rights Commission "Submission on Children, Young Persons and their Families (Oranga Tamariki) Amendment Bill" at 8.

[12] The Modernising Child, Youth and Family Panel *Expert Panel Final Report: Investing in New Zealand's Children and their Families*, above n 3, at 61.

[13] New Zealand Māori Council "Our Children, Our Right: The Māori Council submission" at 1.

[14] Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare *Puao-Te-Ata-Tu (Day break)* (New Zealand Government, September 1988) at 18 and 24.

[15] *New Zealand Māori Council v Attorney-General* [2013] NZSC 6, [2013] 3 NZLR 31.

[16] Judge Heemi Taumanu "Rangatahi Courts of Aotearoa New Zealand – an update" (November 2014) Māori Law Review <http://Māorilawreview.co.nz/2014/11/rangatahi-courts-of-aotearoa-new-zealand-an-update/>.

[17] Kaipuke Consultants *Evaluation of the Early Outcomes of Ngā Kooti Rangatahi Final Report* (Ministry of Justice, 17 December 2012) at [8.4].

[18] Te Puni Kōkiri "Whānau Ora" <https://www.tpk.govt.nz/en/whakamahia/whānau-ora>.

[19] Above.

[20] Te Puni Kōkiri "Our Whānau Ora Stories" <http://www.tpk.govt.nz/en/whakamahia/whānau-ora/our-whānau-ora-stories>.

[21] Ngāi Tūhoe and Government of New Zealand *Service Management Plan* (November 2012) at 32.

[22] New Zealand Law Foundation and Henwood Trust *Rangatahi Māori and Youth Justice: Oranga Rangatahi (Research Paper prepared for the Iwi Chairs Forum)* (Iwi Chairs Forum, March 2018) at 30-31.

[23] Leadership, autonomy.

[24] Hon Pita Sharples "Treaty relationships need rebalancing: Sharples" (22 October 2010) Beehive.govt.nz <https://www.beehive.govt.nz/release/treaty-relationships-need-rebalancing-sharples>.

[25] New Zealand as a whole/generally.