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Submission to the

Social Services Select Committee

Children, Young Persons and Their

Families (Oranga Tamariki) Legislation Bill (the Bill)

From:

Ngāti Tama ki Te Waipounamu Trust

He Kuaka Marangaranga. He Manu Tohu i te Ara
The enduring flight of the Godwit bird guiding us to success and prosperity

INTRODUCTION

1. Ngāti Tama supports the submission made by the ILG. Further response from Ngāti Tama included in this document.

2. If Puao-te-Ata-tu heralded a new dawn in the care and protection of Māori children and the practical application of Māori culture and values, the Bill signals its sunset.[1]

3. Puao-te-Ata-tu made a number of key contributions to the principles of the Children, Young Persons, and Their Families Act 1989 (the **1989 Act**). The 1989 Act, while focusing on the paramountcy of the welfare and best interests of the child, acknowledged that the wellbeing and best interests of a Māori child and young person was to be viewed in the context of their place in a greater whānau, hapū, iwi collective. The practical application of Māori culture was seen as part of the solution.

4. The Bill, informed by the Expert Panel Report and preliminary research, has taken a different approach.[2] A child centred approach remains but the Māori child or young person's wellbeing and best interests are seen on an individual and autonomous basis, without reference to their place in a wider collective. The place and priority of whānau, hapū and iwi no longer assumes prominence or importance.

5. A cynical observer and reader of the Bill could infer a number of underlying assumptions, that is:

   - *Māori abuse their children*
   - *Extended whānau re-victimise their mokopuna*
   - *Māori are part of the problem*
   - *Māori, its culture and values are not the solution*

6. Puao-te-Ata-tu carefully considered the issue of institutional racism, classifying this form of racism as the most "insidious and destructive form."[3] It went on to say that:[4]

> *...It is the outcome of monocultural institutions which simply ignore or freeze out the cultures of those who do not belong to the majority. National structures are evolved which are rooted in the values, systems and viewpoints of one culture only. ...*

Although Puao-te-Ata-tu gave the Crown the benefit of the doubt by commenting that:[5]

> *At the heart of the issue is a profound misunderstanding or ignorance of the place of the child in Māori society and its relationship with whānau, hapūand iwi structures.*

7. In 2017 we cannot accept that there has been a misunderstanding nor can it be said that the Crown is ignorant of Māori, its culture or values.

8. Much has been done to indigenous peoples around the world in the name of protection and indigenous peoples' best interests. Thinking that proposes to once again enforce the cultural norms, values and systems of the majority, while expecting an outcome different to that already experienced in New Zealand and around the world, is

[1] Ministerial Advisory Committee on a Maori Perspective on Social Welfare. (September 1988). *Puao- te-Ata-tu (Day break)*. Wellington, New Zealand: Department of Social Welfare. **Attached** to this submission.

[2] Expert Panel Final Report – *Investing in New Zealand's Children and their Families* (December 2015). Centre for Social Research and Evaluation - *Outcomes for Children Discharged from CYF Care in 2010* (May 2012).

[3] Above n 1, p.19, paragraph 46.

[4] Above n 1, p.19, paragraph 47.

[5] Above n 1, p.7

misguided. It is the same attitude that produced the stolen generation in Australia and the residential schools phenomenon in Canada. History has judged both as culturally destructive and racist. We should learn from their mistakes, not repeat them.

EXECUTIVE SUMMARY

9. When introduced, the 1989 Act was world leading. As a country we were courageous and created a law that acknowledged the importance, and was inclusive, of whānau, hapū, and iwi. That law remains good law, although it has been hampered by poor practice on the part of Child, Youth and Family. The Bill is a step backwards and removes fundamental tenets of the 1989 Act including the priority of placement for tamariki with whānau, hapū, and iwi.

10. Given that 60% of the children in care are Māori and Māori population numbers are increasing, in the absence of real change, the number of Māori children in care will continue to increase. Treaty settlements and initiatives such as Whānau Ora have provided iwi with the opportunity and means to consider strategically how best to achieve positive change for Māori children. In order to effect real change, the Crown and iwi need to work together. Working together includes, but should not be restricted to, service provision.

11. This is the fifteenth restructure of Child, Youth and Family, an organisation that has been constantly reviewed and criticised for underperforming and failing to reduce the number of Māori children in care. Iwi and the Crown have a vested interest in reducing the number of Māori children in CYFs care. This review provides an opportunity for iwi and the Crown to:

    (a) work together constructively at a strategic level, setting the direction of Oranga Tamariki;

    (b) take joint responsibility for reducing the number of Māori children in care; and

    (c) ensure that the policy and practises of Oranga Tamariki are safe and consistently applied to benefit Māori children as well as non-Māori.

    The Bill fails to deliver on any of these opportunities.

12. Despite opposition to the Bill, we recognise that reforms to the 1989 Act are likely. In light of this, we have set out amendments that we consider will make parts of the Bill workable. A schedule with all suggested drafting amendments is attached as Appendix 1.

13. This submission is set out as follows:

    (a) Context – He Taonga He Mokopuna;

    (b) Process issues – Lack of engagement;

    (c) Principal concerns with the Bill;

    (d) Conclusion; and

    (e) Appendix 1.

CONTEXT – HE TAONGA HE MOKOPUNA

14. Tamariki provide the link to the past and are the future of te ao Māori:

    He taonga te mokopuna, ka noho mai hoki te mokopuna hei puna mo te tipuna ka whakaaro tāhou tāhou ka noho mai te mokopuna hei tāmoko mo te tipuna ana he tino taonga rātōna. He mokopuna ratāhou, he mokopuna anō hoki ngāTipuna

    [A grandchild is very precious, a fountain for ancestral knowledge and an everlasting reflection of those who have gone before. We are all grandchildren as are our ancestors.]

DrRangimarie Rose Pere
Cited in *Pihama, L., Daniels, N., National Institute of Research Excellence for Māori Development and Advancement & Māori and Indigenous Analysis Ltd 2007, Tikanga rangahau, Māori and Indigenous Analysis, Auckland, N.Z.*

15. Mokopuna are a vital element of the pā harakeke of whānau, hapū and Iwi: ko te oranga o ngā whānau, ngā hapū, ngā iwi, ko ngā mokopuna; kāore i kō atu, kāore i kō mai. To this end, it is our belief that whānau, hapū and iwi will never and should never be expected to relinquish their collective rights and responsibilities to mokopuna. The place of tamariki astaonga within te ao Māori has not received practical recognition in the Bill.

Puao-te-Ata-tu – September 1988

16. In 1988, the Ministerial Advisory Committee on a Māori perspective for the Department of Social Welfare reported its findings and recommendations on "the most appropriate means to achieve the goal of an approach which would meet the needs of Māori in policy planning and service delivery in the Department of Social Welfare" in 1988.[6] Puao-te-Ata-tu found, among other things, institutional racism within the Department of Social Welfare.[7] The Committee recommended (inter alia):[8]

(a) that in the consideration of the welfare of a Māori child regard must be had to the desirability of maintaining the child within the child's hapū;

(b) that the whānau/hapū/iwi must be considered and may be heard in Court on the placement of a Māori child;

(c) that Court officers, social workers, or any other person dealing with a Māori child should be required to make inquiries as to the child's heritage and family links;

(d) that the process of law must enable the kinds of skills and experience required for dealing with Māori children and young persons, hapū members to be demonstrated, understood and applied (and to require appropriate training mechanisms for all people involved with regard to customary cultural preferences and current Māori circumstances and aspirations) [sic];

(e) that prior to any sentence or determination of a placement the Court should where practicable consult, and be seen to be consulting with, members of the child's hapū or with persons active in tribal affairs with a sound knowledge of the hapū concerned;

(f) that the child or the child's family should be empowered to select Kai tiaki or members of the hapū with a right to speak for them; and

(g) that authority should be given for the diversion of negative forms of expenditure towards programmes for positive Māori development though tribal authorities; these programmes to be aimed at improving Māori community service to the care of children and the relief of parents under stress.

17. The 1989 Act was part of the Crown's response to the Committee's findings and recommendations. In particular, the principle that whānau should be involved in decisions about their tamariki and the priority of placement within whānau, hapū and iwi, found expression in the 1989 Act.

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[6] Above n 1, p.5.
[7] Ibid.
[8] Above n 1, pp.10-11

18. A number of the Committee's concerns and recommendations from 1988 could also be applied to the Bill now. This highlights that the Bill is a step backwards for those recommendations articulated in Puao-te-Ata-tu.

19. However, we are now in a different time. The Ngāti Tama ki Te Waipounamu Trust supports the ILG and believe that, as Māori we are more than capable of fulfilling our potential as whānau and caring for our taonga. Treaty of Waitangi settlements and Whānau Ora in particular have provided a platform by which iwi Māori are in the best position that they have ever been to support transformational change for whānau. We simply cannot afford to be pulled back into the systems and legislative framework that existed in the 1970s. We have come too far.

Expert Advisory Panel Report – December 2015

20. An Expert Advisory Panel was established in April 2015, to review the current care and protection system. In December 2015 the Panel reported back.[9] The panel made a number of observations in relation to Māori, which can be grouped into three general categories:

(a) The importance of whakapapa to Māori children:

> *The future operating model envisages a wider range of professional domains (such as health, education, and psychology) working with children and families, both within the department and across agencies. For Māori children and young people it would also be critical to recognise the principles of tikanga and whakapapa, with each domain balanced and recognised as of equal importance…*[10]
>
> *[With one child commenting:]*
>
> *I think for other kids, especially Māori kids, just really realising who they are, and not losing sight of their background and their whakapapa and who they are related to can really connect them back to their family and whatever else. And I think itcould push them in the right direction.* [11]

(b) Strategic partnership - supporting iwi and the provision of services by Māori:

> *The future system must take a partnership approach with iwi and Māori organisations to provide appropriate wrap-around services for vulnerable Māori families, making better use of the capability and capacity of these organisations to serve the needs of Māori children and young people. This will also enable enhanced long-term relationships with iwi, Māori and community providers to provide more effective support for whānau caring for Māori children. [p11]*
>
> *We are fortunate to have Māori and iwi organisations and whānau who are ready and willing to assume responsibilities to raise these children in*
>
> *the way they raise their own. The new approach will make sure the opportunities such people seek are worthwhile and genuine.*[12]
>
> *An unrelenting approach to reducing the numbers of Māori children and young people coming into contact with the system is needed. Some iwi, Māori and community groups and organisations are better placed to do things and achieve outcomes than government agencies and this should be recognised and valued. These organisations have access and influence beyond the scope of any department and are prepared to use this for the*

9 Expert Panel Final Report – *Investing in New Zealand's Children and their Families* (December 2015).

10 Above n 9, p.87.

11 Above n 9, p.13

12 Ibid.

> *good of these whānau. We need the courage to work this through and the flexibility to develop evidence-based solutions that are necessary for different circumstances.…*[13]

(c) Signaling a change in direction:

> *There has been considerable debate in the past three decades on the place of children in Māori society and on the place of whānau. Much has been said in order to emphasise the differences in Māori society from others and this is not always accurate or true. Some interpretations have confused the issue. The safety of Māori children is paramount and any work we do must be child centred. A well-functioning whānau provides a sound basis to help solve the problems that face these children at particular times in their lives, but a badly functioning whānau can be dangerous. We must never compromise the safety, security, and sense of belonging of any child in their care arrangements.*[14] *A focus on culture and identity is not the complete solution to the under- performance of the system in relation to Māori children and their whānau. It is a factor, and is one of many of the tools we should expect frontline staff and other service providers to be competent in.*[15] ….

21. We agree that the wellbeing, best interests, and safety of our tamariki is of the utmost importance.

22. We submit that a child centred approach focusing on securing a safe, stable and loving home for Māori children and young people is complementary to their place and importance in the whānau, hapū and iwi collective.

23. We agree that the provision of services to assist whānau, hapū and iwi to provide safe, stable and loving homes is needed. However, the strategic partnerships outlined in the Bill are largely restricted to service provision. This is short-sighted.

PROCESS ISSUES – LACK OF ENGAGEMENT

24. The Ngāti Tama ki Te Waipounamu Trust prefer for the ILG to directly engage with the Government on reform to achieve mutually beneficial outcomes. This approach has been successful in other areas where, although we are not always in agreement, we understand each other's positions and are able to express agreement and disagreement with that knowledge and understanding.

25. Despite those relationships, and the fact that with 60% of children being in care being Māori this reform needs to be tailored to tamariki Māori, the appropriate level of

engagement did not happen in this instance.[16] Although Minister Tolley presented at the Iwi Chairs Forum (ICF) in Blenheim in December 2016, our engagement up to this time had been limited. We were provided with some documentation in early December for review and comment in a few days. We did so despite the tight timeframes. However, the Whānau Ora Iwi Leaders Group (ILG) did not support the proposed reforms as they relate to Māori and were concerned that the recommendations supported by the Whānau Ora Iwi Leaders Group were ignored.

26. The Ngāti Tama ki Te Waipounamu Trust propose that the role and scope of the Whānau Ora Partnership Group should be expanded to include governance oversight of Oranga Tamariki. governance oversight of Oranga Tamariki.

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[13] Above n 9, p.13.

[14] Ibid.

[15] Ibid

[16] This is despite other organisations that the Ngāti Tama ki Te Waipounamu Trust are aware of receiving an intensive level of engagement.

27. In summary, consultation on the Bill has fallen far short of what is to be expected both as a Treaty partner and noting that the majority of children in care and youth justice are Māori. This does not reflect engagement of Treaty partners.

28. The lack of consultation is difficult to understand in a climate where discussions are currently occurring between iwi and the New Zealand Police, Corrections and Ministry of Justice. These discussions are centred on the 'justice pipeline'[17] and developing practical strategies to reduce Māori over-representation in the Youth Court, District/High Court and prison.

29. Ngāti Tama agree that the justice pipeline for many Māori children and young people starts in care and protection and then progresses to youth justice. It is acknowledged in that forum that positive and sustainable change for Māori and the NZ community can best be achieved if we address the issue together. But it would appear that, given the lack of consultation, the Ministry of Social Development does not hold the same view or see any value in engaging with iwi to address the issue together.

PRINCIPAL CONCERNS WITH THE BILL

30. The Expert Panel in their final report acknowledges the need to address the over- representation of Māori children in care, specifically they state:[18]

> *Māori children and young people are twice as likely to be notified to CYF compared to the total population. Potential causes of this over-representation include higher levels of deprivation in Māori families, conscious and unconscious bias in the system, and a lack of strong, culturally appropriate models for strengthening families and child development.*

Despite knowing these potential causes, Minister Tolley, through the introduction of this Bill, seeks to impose a child welfare system that is consciously culturally biased.

31. At the First Reading of the Bill, Minister Tolley stated that it "…provides the foundation for transformational reform…"[19] that places "…children and young people at the heart of what we do so that we can provide them with safe, loving, and stable homes and the successful lives that they deserve."[20]

32. The Bill does not provide that foundation. Rather, the Bill provides a platform for our children and young people to be removed from their whānau, hapū, and iwi and placed in homes that are unable or unwilling to maintain those links. The Bill, especially when read together with the special guardianship provisions already in force in the 1989 Act, will result in another lost generation of indigenous children.

33. With respect, noting that the assimilation policies of old could also have been described as transformational, attempting to achieve transformational change by imposing the cultural norms of the majority has already proven unsuccessful around the world. To impose these norms on Māori children and young people in care would repeat the mistakes already made by preceding governments.

34. This conscious bias is repeated and reinforced throughout the Bill. There are five principal areas of concern in the Bill. These are addressed in further detail below.

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[17] The 'justice pipeline' is the term adopted by the Justice ILG to describe the pathway taken by children and young people in care, which flows from care and protection, to youth justice, and on to the higher courts.

[18] Above n9, p. 7.

[19] Hansard, Hon Anne Tolley, 13 December 2016

[20] Hansard, Hon Anne Tolley, 13 December 2016

Kupu Māori without tikanga Māori [section 2]

35. The Ngāti Tama ki Te Waipounamu Trust supports the inclusion of a concept such as 'mana tamaiti (tamariki)' in the Bill but only where the concept is correctly defined.[21] The current definition is a perversion of tikanga and it does not accurately convey a Māori child or young person's right to be Māori and to belong to a whānau, hapū, or iwi.

36. Mana tamaiti (tamariki), in the Bill, describes a Māori child or young person as an individual, without reference to their right to cultural identity and their place in a whānau, hapū, and iwi. To recognise a Māori child or young person's mana, whakapapa and whanaungatanga, you **must** recognise they are Māori and, as Māori, that they are a member of a whānau, hapū, and iwi. It is inappropriate to co-opt a Māori term to describe a concept that is fundamentally at odds with tikanga Māori and the Ngāti Tama ki Te Waipounamu Trust cannot support the current definition.

37. The current definition is ethnocentric and imposes the values and culture of the majority on Māori. Contrary to Minister Tolley's assertions at the recent ICF hui at Waitangi that the Bill strengthens the place of whānau, hapū, and iwi, the definition weakens their place in the lives of Māori children and young people. This is unacceptable and the definition should be amended as follows:

> **mana tamariki** in relation to every Māori child and young person means the intrinsic value and inherent dignity of the child or young person in accordance with tikanga Māori including the child's right to be Māori and to belong, in a manner appropriate to circumstance, to his or her whānau, hapū and iwi.
>
> **tikanga Māori** means Māori customary laws and practices.

Inadequate recognition of Māori in purposes of Bill [section 4]

38. The Expert Panel reports that 60% of children in care are Māori and that reducing this over-representation is important for all New Zealanders. Currently, the Māori outcomes focused purposes are tacked on at the end of the purpose section and do not work towards reducing the number of Māori kids in care. The Bill must recognise that the reduction of the number of Māori kids in care is important for all NZers. It does not do that. It must be amended.

39. Proposed wording to provide for the suggested amendment is set out in Appendix 1.

No obligation to include Māori in decision making [section 5]

40. Under the 1989 Act, any court or person exercising powers under the Act must be guided by the principle that:

    (a) whānau, hapū, and iwi "should" participate in decisions affecting a child or young person and regard "should" be had to their views;[22]

    (b) the relationship between a child or young person and their whānau, hapū, and iwi "should" be maintained and strengthened;[23] and

    (c) consideration "must" always be given to how a decision would affect the stability of a child or young person's whānau, hapū, and iwi.[24]

41. The Bill removes these positive obligations and instead provides that whānau, hapū, and iwi "can" participate in decision-making and that "consideration is given" to that child or young person's place in the wider collective. This is unacceptable and is directly contradictory to recognising mana tamariki (when applying the correct definition of that term), the importance of whakapapa and the practice of whanaungatanga.

[21] Bill, clause 4, relating to section 2

42. The Ngāti Tama ki Te Waipounamu Trust cannot support the proposed amendments to section 5. The Ngāti Tama ki Te Waipounamu Trust considers that the rights of whānau, hapū and iwi are appropriately recognised in s 5 of the 1989 Act and these should be retained.

43. However, in the alternative, amendments must be made to ensure that the Bill provides for:

(a) the role of whānau, hapū, and iwi in decision making;

(b) the recognition of the child or young person's place within their whānau, hapū, or iwi.

(c) the obligations on Oranga Tamariki to maintain and strengthen the relationship between a child or young person and their whānau, hapū, and iwi.

44. Proposed wording to provide for the suggested amendment is set out in Appendix 1.

Inadequate recognition of importance of Treaty [section 7A]

45. The Ngāti Tama ki Te Waipounamu Trust supports requiring the Chief Executive to recognise and provide for a practical commitment to the principles of the Treaty of Waitangi however:

(a) The Ngāti Tama ki Te Waipounamu Trust does not support the principles of the Treaty of Waitangi being included solely in this section; there should be a stand-alone Treaty of Waitangi section.

(b) The list of matters in section 7A(2), as examples of how the Chief Executive must recognise and provide a practical commitment to the Treaty of Waitangi, should be non-exhaustive.

(c) The Chief Executive must be required to enter into strategic partnerships with iwi and Māori organisations (rather than be required to "seek to" do so); and

(d) Strategic partnership must not be restricted to service provision.

46. As noted above, the inclusion of the principles of the Treaty of Waitangi in the Bill must not be limited to an exhaustive and closed list of the Chief Executive's duties. We recommend a stand-alone section based on section 8 of the Resource Management Act 1991 (the **RMA**) that requires all persons exercising functions and powers under the Act to "recognise and provide for" a practical commitment to the Treaty of Waitangi.[25] The inclusion of the Treaty principles in the Bill in this way is intended to ensure that all persons exercising functions and powers under the Bill, not just the Chief Executive, are culturally competent and understand the importance of the Treaty principles in this context.

47. Iwi, the Crown and the New Zealand community all have an interest in reducing the over-representation of Māori in care (whether that is with CYFs, Police, Justice, Corrections). Amendments to the Bill are required to ensure that the practical commitment to the Treaty of Waitangi is more than just words and goes beyond service provision.

48. Proposed wording to provide for the suggested amendment is set out in Appendix 1.

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22 The 1989 Act, s 5(a).

23 The 1989 Act, s 5(b).

24 The 1989 Act, s 5(c)

Limited assistance and no priority of placement [section 13]

49. Under the 1989 Act, when determining the welfare and interests of a child or young person, the court or person must be guided by the principle that primary role in caring for and protecting a child or young person lies with their family, whānau, hapū, and iwi.[26] This is reinforced by other principles such as:

(a) whānau, hapū, and iwi should be provided the necessary assistance and support to protect and provide care for a child or young person, prior to and following removal;[27]

(b) when a child or young person is removed from their whānau, hapū, and iwi, they should be returned;[28]

(c) if they cannot be returned immediately, that child or young person should live in the same locality where their links with their whānau, hapū, and iwi can be maintained and strengthened;[29] and

(d) if they cannot remain with, or be returned to, whānau, hapū, or iwi then priority should be given to their hapū or iwi, and if not possible then to Māori, and if not possible, then to non-kin.[30]

50. The Bill removes these principles, with the exception of assistance provided to whānau, hapū, and iwi (although we note that the principle of assistance is amended to limit its application). The Ngāti Tama ki Te Waipounamu Trust have two key issues with the proposed reform:

(a) It removes the priority of placement of Māori children or young people with whānau, hapū, and iwi.

(b) The Bill only provides assistance to whānau, hapū, and iwi *prior* to the removal of a child or young person (unless it is unreasonable and impracticable to do so).

After removal, there is no obligation to assist whānau, hapū, and iwi to resume care of their child or young person.

51. The Ngāti Tama ki Te Waipounamu Trust cannot support the proposed amendments to section 13 of the 1989 Act. The removal of the priority of placement and the obligation to assist whānau, hapū, and iwi to resume care of their children is directly opposed to recognising and promoting the importance of the mana of the child or young person, their whakapapa, and whanaungatanga. The amendments are culturally biased because they impose the cultural norms of the majority on Māori. In 2017, this is unacceptable Crown policy and the proposed amendments cannot be made.

52. The Ngāti Tama ki Te Waipounamu Trust considers that tikanga Māori, as it relates to the care and protection of Māori children and young people, is appropriately recognised in section 13 of the 1989 Act and this should be retained.

53. However, in the alternative, amendments must be made to ensure that the Bill provides for:

(a) the priority of placement of Māori children or young people with whānau, hapū, and iwi; and

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[25] Resource Management Act 1991, section 8 (Treaty of Waitangi) and section 6(e) (Matters of National Importance which includes the legal weighting "recognise and provide for").

[26] The 1989 Act, s 13(b).

[27] Ibid,

[28] The 1989 Act, s 13(f)(i).

[29] The 1989 Act, s 13(f)(ii).

[30] The 1989 Act, s 13(g)

(b) assistance to whānau, hapū, and iwi to care and protect for their child or young person occurs both before and following removal.

54. Proposed wording to provide for the suggested amendments is set out in Appendix 1.

CONCLUSION

55. The Ngāti Tama ki Te Waipounamu Trust are committed to looking after our Tamariki and would like our submission taken into consideration.