SUBMISSION TO THE

JUSTICE COMMITTEE

FAMILY COURT (FAMILY COURT ASSOCIATES) LEGISLATION BILL

POU TANGATA IWI LEADERS GROUPS – TE ORA O TE WHĀNAU AND JUSTICE

CO-CHAIRS: RAHUI PAPA AND KAHURANGI DAME NAIDA GLAVISH

Introduction

1. This submission on the Family Court (Family Court Associates) Legislation Bill (**Bill**) is made by the Pou Tangata Iwi Leaders Groups on Te Ora o Te Whānau and Justice (**ILGs**) on behalf of the Iwi Chairs Forum (**ICF**).
2. The co-chairs of the Te Ora o Te Whānau and Justice ILGs wish to be heard by the select committee in support of this submission.

Executive summary

3. The Te Ora o Te Whānau and Justice ILGs agree that delay in the Family Court is endemic and damaging and that solutions need to be found. Unfortunately, as occurred when significant changes were introduced in the Family Court in 2014, there is scant evidence that the Bill in its current form will materially improve the timeliness of justice in the Family Court.
4. In our view, there are real risks that an additional layer of bureaucracy will significantly increase the potential for confusion and fragmentation from this new 'backroom administrator' Family Court Associate role. Rather than entrenching process-driven transactional decision-making, it is our preference that the money should be committed to resourcing an approach that will achieve substantive resolution of cases.
5. Significantly, the Bill also fails to address the serious shortcomings identified in the independent review in 2018-19 about the quality of justice in the family jurisdiction. More fundamental reform, reflecting the recommendations of the Independent Panel's 2019 *Te Korowai* report, is needed to deliver culturally appropriate justice for whānau Māori and the wider community in the family jurisdiction.
6. The need for transformational change is now urgent. There is widespread acknowledgement of the over-representation of Māori in the criminal justice system. That over-representation starts in the family jurisdiction – most notably in the 'care and protection' system, as evidenced by the tragic and disproportionate number of tamariki Māori in the care of the state. While tamariki Māori make up only 25% of all children in Aotearoa, they represent 68% of the children in state care (Office of the Children's Commissioner, 2020).
7. The Family Court is an important cog in this system, as the ultimate decision-maker determining when children and young people are placed in, and discharged from, state care. The Bill can and should be used to introduce positive change in care and protection proceedings, as a first step in making the Family Court more accessible and inclusive for both Māori and non-Māori, and to fundamentally improve outcomes for whānau and the lives of our tamariki.
8. We recommend a new shared decision-making model representative of the community served by the Family Court: Te Pae Kōti ā-Whānau (Family Court Panel), a three-person Panel consisting of a legally trained convenor (Family Court Associate or Family Court Judge) and qualified representatives from iwi and the community, delivering therapeutic justice based on tikanga Māori, available to participants of all ethnicities.
9. This would be a significant step towards rebuilding community confidence in the Family Court – there is ample evidence that users of all ethnicities currently find the Court's processes alienating, inaccessible and disconnected.
10. Te Pae Kōti ā-Whānau embraces the relationship envisioned by Te Tiriti o Waitangi as well as the philosophy Te Ao Mārama, encompassing a vision of therapeutic justice based on te ao Māori and closer community connections.

Structure of this submission

11. This submission is set out as follows:

    a. Mandate

    b. The background to the Bill

    c. The Bill – principal concerns

    d. Improving the Bill – a better model for care and protection proceedings

Mandate

Iwi Chairs Forum

12. The Iwi Chairs Forum is a group comprising mandated chairpersons of iwi across the country. All iwi chairpersons have an open invitation to participate in and contribute to the ICF. There are approximately 76 current members of the ICF.

13. Various Iwi Leaders Groups have been established from the members of the ICF in relation to particular kaupapa. The ILGs provide a focused means of direct engagement between iwi and the Crown on matters of mutual interest and concern. Each ILG convenes national and regional hui with iwi and hapū around the motu as required and also report, and seek direction from, the ICF. This submission is provided by the ILGs established for Te Ora o Te Whānau and Justice.

Pou Tangata - Whānau Ora and Justice ILGs

14. The Whānau Ora ILG was mandated by the ICF in 2013 to develop an equal Treaty partnership between the Crown and iwi at a governance level, particularly in relation to Whānau Ora initiatives. In 2020, the NICF agreed the ILG name name change Te Ora o Te Whānau. The Justice ILG was mandated by the ICF in 2016 and focuses on justice reforms, particularly relating to or affecting iwi such as those strengthening the capacity of iwi to change the outcomes for iwi in State care and/or prison. The co-chairs of both ILGs are currently Rahui Papa (Ngāti Koroki Kahukura) and Naida Glavish (Ngāti Whatua). They are supported by a team of iwi technical advisors.

The background

Recognising the need for systemic change – Iwi leadership and the judiciary

15. Iwi leaders, senior members of the judiciary and Justice officials have held hui over the last four years (2019 – 2022) regarding the need for transformational change in the Family Court. Since the 1980s there have been many seminal reports calling for a justice system more attuned to the needs of Māori, and participants at the recent hui acknowledged that the fundamental reforms advocated for decades have not yet been achieved. The reports have highlighted the exclusion, voicelessness and ongoing disparities experienced by Māori in the court system. There have been many missed opportunities for meaningful change.

16. The iwi perspective seeks to empower whānau so that joint decisions are made about tamariki, with the Family Court providing restorative justice (to peace-make, solve problems and settle the wairua) and moving from an adversarial to an inquisitorial approach.

17. From the judicial perspective, evidence about the whakapapa of tamariki Māori is critical to decision-making and judges need help from iwi and the community to obtain that information in a systematic way.

A new model for the courts

18. The calls for change in the justice system have gathered momentum and reform has started in the criminal jurisdiction with the introduction of the specialist therapeutic courts and the philosophy of Te Ao Mārama, encompassing a vision of therapeutic justice based on te ao Māori and closer community connections. This is a system that seeks to prevent harm, address its causes and promotes healing and restoration among individuals and communities.

19. The Chief Justice Dame Helen Winkelmann has expressed support in recent speeches for the new Te Ao Mārama approach to be extended to the family jurisdiction. In a 2019 speech examining the foundations of judicial legitimacy in changing times, her Honour noted the relationship between the courts and the community and how greater community involvement in the work of the courts will help secure judicial legitimacy:

> "I believe that maintaining a sense that the judiciary is representative ... requires rethinking and building the relationship between the courts and the community. *Greater connection is best achieved by involving that community in the processes of the delivery of justice. This is not a radical notion*. The jury, an institution dating back to the middle ages, engages the community in the delivery of justice. The Rangatahi courts are also working models in this regard. These are courts which sit on marae in the Youth Court jurisdiction. The processes of the Court are in accordance with tikanga and involve kuia and kaumatua in the young person's rehabilitation. The community is thereby directly involved in lending its knowledge and strength and communal space to the Court. This is therapeutic justice, aimed at restoring balance to the lives of all affected by the young person's conduct, and creating new support structures for the youth and their whānau.
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> ... we need to seek greater connection to the community through the mainstream courts. ... This involves taking the best of what has been learned through these [Special Circumstances and New Beginnings Courts] pilots and applying throughout the District Courts. I believe the time is right for that approach."[1]

20. On the occasion of the Family Court's 40th anniversary in 2021, the Chief Justice spoke about the Family Court's history and noted the Court's founding vision of:

- therapeutic justice,
- working with the support, and drawing on the wisdom, of the community, and
- incorporating the values, culture and beliefs of te ao Māori in its work.[2]

Recent reforms of the family justice system

21. Significant changes introduced in 2014 in the family jurisdiction were reviewed by an Independent Panel in 2019. The Panel's 2019 *Te Korowai Ture ā-Whānau* report noted that "[f]or over 30 years, there have been calls for changes in how the New Zealand justice service, including the Family Court, recognises the Māori world view" and that the "2014 reforms made

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[1] *What Right Do We Have? Securing Judicial Legitimacy in Changing Times*: The Dame Silvia Cartwright Address, 17 October 2019, Dame Helen Winkelmann Chief Justice of New Zealand, at p10 (emphasis added). Available at https://www.courtsofnz.govt.nz/assets/7-Publications/1-Speeches-and-papers/scs.pdf.

[2] Address by Chief Justice Helen Winkelmann, *On the 40th anniversary of the establishment of the Family Court: Securing the vision of its founders 40 years on* (November 2021), at p3. Available at https://www.courtsofnz.govt.nz/assets/speechpapers/20210512-CJ-40th-anniversary-FC.pdf.

no mention of Māori and did not provide for a te ao Māori perspective in any of the new law, policy or practices".[3]

22. The Panel concluded, based on consultation, submissions and research, that:
    - "family justice services are monocultural
    - frustration and scepticism is widespread and deep seated amongst Māori whānau, hapū and iwi, and kaupapa Māori organisations
    - the way many family justice services operate does not align with tikanga Māori or Māori views of whānau, particularly the role grandparents and extended whānau play in caring for children and mokopuna
    - there is knowledge and expertise in the community about what works for tamariki and whānau Māori, but this knowledge is not recognised or valued in family justice services
    - the Family Court would benefit from enabling a Mana voice to ensure access to mana whenua and wider Māori community knowledge
    - there is no official requirement for the Family Court to build and maintain relationships with mana whenua
    - there is little or no engagement with kaupapa Māori services by Māori for Māori in family justice services
    - some community organisations and professionals provide tikanga-based services (e.g., tikanga-based dispute resolution), but these are an exception
    - Māori whānau, support workers and lawyers report that the Family Court can be a foreign, isolating and intimidating experience
    - the Māori Land Court is responsive to whānau Māori, encourages the use of te reo Māori and incorporates tikanga Māori in court proceedings
    - the Institute of Judicial Studies has te reo and tikanga Māori programmes, however, these are not compulsory for Family Court judges"[4]

23. The Panel recommended that the Ministry of Justice, in partnership with iwi, the Family Court and others, develop a strategic framework to improve family justice services for Māori. This included: specialist advisors to assist the Court on tikanga Māori, kaupapa Māori services and whānau-centred approaches, providing a Mana voice to ensure the Court has access to mana whenua and wider Māori community knowledge, and developing a tikanga-based pilot for the Court.[5]

24. The government welcomed the Panel's report and legislative changes have been implemented in phases (including the current Bill) to implement some of the recommendations. The then-Minister of Justice Hon Andrew Little said in 2019 that he was "keen to give close consideration to the recommendations about the need for more culturally sensitive approaches". But it is apparent that further work has *not* been progressed on the Panel's fundamental recommendations to improve family justice services for Māori – despite the Panel saying that recognition of te ao Māori was a priority.[6]

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[3] Te Korowai Ture ā-Whānau: The final report of the Independent Panel examining the 2014 family justice reforms, May 2019, at [40]-[41]; available at https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-final-report-independent-panel.pdf.

[4] Ibid, at [42].

[5] Ibid.

[6] Ibid: see Appendix 3.

25. This is disappointing and a significant missed opportunity. The current Bill can and should be used to implement at least one innovative change, in relation to care and protection proceedings, as a step in the right direction. As discussed below, te ao Mārama provides the foundation for making change in the family jurisdiction to deliver culturally appropriate justice for whānau Māori and the wider community.

The Bill

26. The Panel recommended introducing a new role to address one of the drivers of delay: the heavy administrative workload of judges, referred to as 'box work' (tasks such as appointing counsel, directions for filing evidence and service etc) which delays the progress of active cases.[7] The Bill proposes to make more effective use of judge time to enable the faster resolution of cases and reduce delay, by introducing the new quasi-judicial role of Family Court Associate to deal with administrative and procedural matters.

27. As already noted, we support measures that reduce delays. The administrative workload of judges which is expected to be delegated to Family Court Associates currently consumes about 20% of judicial time. However, serious questions remain to be answered about how effective the new role will be in significantly reducing the backlogs and delays in practice. The Ministry has noted major limitations and constraints on its analysis, including:[8]

- There are multiple causes of delay and some are not fully understood.
- There are data limitations that have limited the Ministry's ability to undertake robust data collection ... "from anecdotal evidence and the Panel's report, [the Ministry] can surmise that there is a level of avoidable delay".
- No full review has been undertaken on the drivers of delay or their significance.
- "There are indications that the size of a court's administrative workload and how that workload is distributed across decision-makers are key drivers of delay, however there is no quantitative evidence about the effects of these factors on resolution time."
- "It is a government manifesto commitment to implement the Panel's report. The options to address the problem [of delay] are based only on the recommendations from the Panel's report, further options were not explored".

28. The Ministry also notes the following risks:

- The pool of eligible candidates for the role may be small, necessitating a phased introduction over a period of at least three years.
- Court space restrictions, meaning that judges and Associates may not be able to work at the same time, decreasing their effectiveness.
- The success of the Associate role is contingent on judges delegating work – "some judges may prefer to see a case through from start to finish to minimise any risk of missing any key comments, event, or other information".

29. This last point is particularly significant. The Panel's principal recommendation was to introduce a joined-up family justice service, Te Korowai Ture-ā-Whānau, bringing together the siloed and fragmented elements of the current in and out of court family justice services. The Panel found that families often appear in the Family Court on a raft of matters and "[multiple] applications can be considered by many different judges, frequently without access to the full history of the

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[7] *Regulatory Impact Statement: Family Court Associate, Ministry of Justice, 9 February 2022* (**RIS**), Executive Summary.

[8] Ibid: see Executive Summary, and [20] – [23].

case. Having one judge case manage a file ensures consistency and familiarity and is likely to promote better judicial decision-making".[9]

30. In our view, there are real risks of adding an additional layer of bureaucracy and potential for confusion and fragmentation from this new 'backroom administrator' role. We would prefer to see the money committed to resourcing an approach that will achieve substantive resolution of cases, rather than entrenching process-driven transactional decision-making.

31. However, we assume that the Bill will proceed and the new role introduced, and to the extent that it marginally improves the judges' availability it may result in some (albeit unquantified) reduction in case delays.

32. That still leaves an important finding from the Panel unaddressed: that "family justice services are still monocultural and alienating for many Māori. This must change".[10] This alienation is also experienced by many non-Māori.

33. The Panel found that this is undermining public confidence in the Court: "A number of submitters expressed serious concern at the way they experienced their treatment in the Family Court, and such concerns have led to the development of community groups who publicly question the soundness of Family Court decisions".[11]

34. More recent research on experiences of whānau Māori and others in Family Court care and protection proceedings similarly found "overwhelmingly negative" outcomes: intimidation, exclusion, alienation and feelings of powerlessness.[12]

A better model for care and protection proceedings

35. There is a better way forward that will go some way to addressing these long-standing, serious concerns that undermine the Family Court's perceived legitimacy. As a first step, we recommend including in the Bill a new shared decision-making model for care and protection proceedings, along the lines set out below.

36. We believe there is genuine support amongst iwi leaders as well as the senior judiciary (as noted earlier) and that the time is right for innovative approaches of this type.

37. The reform is consistent with the philosophy of Te Ao Mārama (including the specialist therapeutic courts).

38. It is also consistent with other models of Māori decision-making across the justice and health systems – for convenience, these are summarised in **Attachment A** to this submission.

39. The recent significant reform of health sector structures, for example, includes a statutory mechanism for the recognition of Māori perspectives on health service design, delivery and outcomes (Pae Ora: Iwi-Māori Partnership Boards), and in the criminal justice system there is pre-court diversion and resolution based on therapeutic justice, te ao Māori and iwi-Police partnership (Te Pae Oranga). And, as discussed next, the Parole Board provides a useful model for the family jurisdiction, in relation to shared decision-making including appointment criteria, hearing processes, and constitution of quasi-judicial panels. The Parole Board panels provide a well-established model, having been in operation since 2002.

40. The Parole Board functions through statutory panels chaired by legally trained convenors (current/former judges or lawyers with at least seven years experience) and community

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[9] Note 3 above, at p14.
[10] Note 3, at [47]. See also [48] – [58].
[11] Note 3, Executive Summary.
[12] *Te Taniwha i te Ao Ture-Ā-Whānau: Whānau experience of care and protection in the Family Court*, July 2020; Dr Amohia Boulton, Maia Wikaira, Lynley Cvitanovic & Tania Williams Blyth.

representatives, holding statutory hearings and making parole release decisions according to statutory principles. Useful aspects to draw on include:

- a well-established mechanism for community representation on a quasi-judicial decision-making body,
- statutory appointment processes and criteria, including "the ability to operate effectively with people from a range of cultures",
- the use of inquisitorial processes (operating as an inquiry) while maintaining statutory standards (statutory guiding principles for decision-making, decisions in writing, reasons given), and
- the panels operate regionally, allowing for links with local communities.[13]

41. The common themes across the different models are an emphasis on partnership with local communities to deliver therapeutic (inquisitorial) justice, informed by te ao Māori and mātauranga Māori, to participants of all ethnicities.

Te Pae Kōti ā-Whānau (Family Court Panels)

42. This approach can – and we believe, should – be incorporated in the Bill in relation to care and protection proceedings under the Oranga Tamariki Act/Children's and Young People's Wellbeing Act 1989, to make the process more accessible and inclusive and to fundamentally improve outcomes for whānau and tamariki.

43. This would be a three-person Panel consisting of a legally trained convenor and representatives from Iwi and the community, delivering therapeutic justice based on tikanga Māori, available to, and serving, participants of all ethnicities. Te Pae Kōti ā-Whānau would be responsible for applying the law and making decisions necessary for all tamariki who come to the attention of Oranga Tamariki and for whom legal orders are sought.

44. The convenor would likely be a Family Court Associate with judges being freed up to carry out their remaining core responsibilities . Alternatively, given the importance of the work involved and dependent on the number of Family Court Associates appointed, judges may want to retain a role in care and protection decision-making alongside the community.

45. To ensure Te Pae Kōti ā-Whānau is well informed and qualified, iwi and community representatives would be appointed and would operate regionally (in the same way as the Parole Board panels, and the Family Court). Statutory appointment criteria similar to those recently introduced for the Pae Ora Iwi-Māori Partnership Boards could be used – including requirements to demonstrate capability, engagement with local Māori communities, representation of local communities and accountability.[14]

Conclusion

46. The examples given illustrate that there are workable and effective models of inclusion of Māori decision-making already in place in our justice and health systems, that can be drawn on in developing the -Te Pae Kōti ā-Whānau concept for the family jurisdiction. Commitments have been made time and time again to Māori and the New Zealand community but the opportunity

[13] See the relevant provisions of the Parole Act 2002.

[14] Pae Ora (Healthy Futures) Act 2022, in force from 1 July 2022: see Part 2, subpart 4 (Iwi-Māori partnership boards). The Act "provides for iwi-Māori partnership boards to enable Māori to have a meaningful role in the planning and design of local services" (s6(f)). Section 29 Purpose of IMPBs - to represent local Māori perspectives on: needs and aspirations of Māori in relation to hauora Māori outcomes; health sector performance; and design and delivery of services and public health interventions within localities. See also section 31: criteria for recognition as an iwi-Māori partnership board.

for transformational change has yet to be delivered. By working in partnership, we have an opportunity now to honour the commitments made.

Rahui Papa
Pou Tangata Co Chair
[date]

Dame Naida Glavish
Pou Tangata Co-Chair

ATTACHMENT A:

***The Family Court – Delivering transformational change that recognises Te Ao Māori and Partnership*: analysis of options for change**

- ***Option: Te Pae Kōti ā-Whānau* (Family Court Panels) – to facilitate care and protection proceedings**
- This paper provides analysis of alternative models of justice, to support the discussion regarding options for change in the family jurisdiction based on te ao Māori and partnership.

Alternative models currently available – an overview

Justice system reforms in the criminal jurisdiction drawing on Te Ao Mārama (including the specialist therapeutic courts) are in train. Te Ao Mārama provides the foundation for proposed changes in the family jurisdiction to deliver culturally appropriate justice for whānau Māori and the wider community.

The models currently available in Aotearoa New Zealand, discussed below, are consistent with Te Ao Mārama and provide examples of inclusion of Māori decision-making in the justice and health systems.

In the justice system there is pre-court diversion and resolution (**Te Pae Oranga**) based on therapeutic justice, te ao Māori, and iwi-Police partnership; and statutory panels consisting of legally trained convenors and community representatives making parole release decisions (**Parole Board**). In the health system, the recent significant reform of health sector structures includes a statutory mechanism for the recognition of Māori perspectives on health service design, delivery and outcomes (**Pae Ora: Iwi-Māori partnership boards (IMPBs)**). As discussed below, elements of each of these can usefully be adapted for the Family Court.

Guidance can also be found in comparable jurisdictions in relation to indigenous jurisdiction over child and family services. In Canada, a Saskatchewan First Nation has been legally transferred jurisdiction and control over its children in care. This marks the first time that control of child and family services has been restored to an indigenous community under federal law. **Cowessess First Nation's Eagle Woman Tribunal**, launched in March 2021, is an internal judicial system that will review and make decisions regarding child welfare and other matters on appeal pertaining to Cowessess citizens.

The models are summarised below, and the aspects that can usefully inform the family jurisdiction options are highlighted.

Te Pae Oranga

Background

Te Pae Oranga (Iwi Community Panels) is a community-Police partnership model, based on tikanga Māori and restorative justice, alternative to court for low-level offending. It was established in 2013 and is a nationally coordinated partnership with iwi Māori providers across many Police districts to address low-level offending (there are currently 20 Panels in operation). It is described as a Māori-led approach for dealing with crime that is open to, and effective for, people of all ethnicities. The initiative is widely supported by Māori leaders across Aotearoa, including the Māori King, Te Arikinui Kingi Tūheitia, who is the programme's patron.

Non-statutory entities

The Panels are not statutory entities. When Police refer someone to Te Pae Oranga, Police are using their discretion under common law not to prosecute, in a similar way to deciding to issue a warning.

Kaupapa

Te Pae Oranga recognises the importance of iwi involvement in dealing with crime, and incorporates Māori justice practices and philosophies into the response to crime; signifies resolution and facilitation, and the importance of supporting the wellbeing of the participant (the offender), the victim and any whānau/other support people who attend; and is based on evidence that a community-based response to low-level offending can reduce reoffending, by promoting behaviour change and avoiding the progression of offenders into the criminal justice system.

While Te Pae Oranga follows Māori cultural practice and protocol, it is available to participants of any ethnicity.

Panel membership

A key feature is the panels of local community leaders who have valuable knowledge and experience. Panels are made up of three community people (not lawyers or judges) who decide what should happen as a result of the offence. Reflecting the partnership between Police and iwi, panel members are chosen from and endorsed by iwi.

Te Pae Oranga process

Eligible participants (offenders) are referred by Police to the local service agency that runs the programme. Police provide the panel with a summary of facts, detailing the type of offence and the facts leading up to arrest, and the participant is given an opportunity to explain to the panel the reasons for the offending. The panel supports the participant to make a plan to put things right – the plan includes actions the participant must complete and conditions they must follow. The process includes a huinga o mua (pre-panel meeting), hui matua (panel meeting) and huinga o muri (follow up).

Evaluation of outcomes

Police report they have had some real successes with Te Pae Oranga and it is changing lives, with around 80% of people who attended completing their agreed actions. An evaluation published in 2019 showed Te Pae Oranga reduced harm from reoffending by 22 percent.

Useful aspects to draw on

- community-led therapeutic justice, based on te ao Māori
- while based on Māori cultural practice and protocol, it is available to participants of any ethnicity
- an example of Police partnership with local iwi that is producing positive outcomes

Parole Board

Background

The Parole Board was established in 2002 as an independent statutory body under the Parole Act 2002. The Board's statutory function is to consider offenders for parole and, if appropriate, to direct their release on parole.

Statutory appointments

Appointments to the Parole Board are made by the Governor-General on the recommendation of the Attorney-General, for terms up to 3 years. In making the recommendation, the Attorney-General

must be satisfied that the person has knowledge or understanding of the criminal justice system; the ability to make a balanced and reasonable assessment of the risk an offender may present to the community when released from detention; the ability to operate effectively with people from a range of cultures; and sensitivity to, and understanding of, the impact of crime on victims.

Decision-making panels, operating regionally

The Board operates in Panels of at least 3 members, consisting of a convenor who is legally trained plus community members, operating in each region.

Hearings are conducted in the manner of an inquiry – the Convenor decides who will attend hearings and who will speak, and Panel members ask questions of the offender.

The Panel considers written information and any oral submissions and takes into consideration whatever information it thinks fit, even if the information would not be admissible as evidence in court. The information will typically include details of the offending, current and previous convictions, a Department of Corrections' parole assessment report, any restorative justice processes undertaken, specialist reports, and submissions from victims and police and from the offender and his/her supporters.

Immediately following the discussion with the offender, supporters and Corrections staff, the Panel deliberates alone to consider its decision. The Panel will then invite the offender and others attending the hearing back to deliver its decision.

Decisions are made by the majority of members on the Panel. Decisions on offenders' detention or release, or on release conditions, must be in writing and include reasons.

The statutory principles guiding the Panels' decision-making are set out in the Parole Act. The safety of the community is the paramount consideration. Other guiding principles include: that offenders must not be detained any longer than is consistent with the safety of the community, and must not be subject to release conditions that are more onerous, or last longer, than is consistent with the safety of the community; offenders must be provided with information about decisions that concern them, and advised how they may participate in decision-making that directly concerns them; and that the rights of victims are upheld, and submissions by victims and any restorative justice outcomes are given due weight.

Useful aspects to draw on

- an established mechanism for community representation on a quasi-judicial decision-making body
- the statutory appointment criteria, including "the ability to operate effectively with people from a range of cultures"
- use of inquisitorial processes (operating as an inquiry) while maintaining statutory standards (statutory guiding principles for decision-making, decisions in writing, reasons given)
- the panels operate regionally, allowing for links with local communities

Health system: Pae Ora legislation – Iwi-Māori Partnership Boards

Background

The Pae Ora (Healthy Futures) Act 2022, in force from 1 July 2022, provides for iwi-Māori partnership boards (IMPBs) "to enable Māori to have a meaningful role in the planning and design of local services".

Statutory purpose and functions

The statutory purpose of IMPBs is to represent local Māori perspectives on the needs and aspirations of Māori in relation to hauora Māori outcomes; health sector performance; and the design and delivery of services and public health interventions in local areas. They have a range of functions, including engagement ("to engage with whānau and hapū about local health needs"), communication, evaluation ("evaluate the current state of hauora Māori in the relevant locality"), planning, monitoring performance ("monitor the performance of the health sector in a relevant locality"), and reporting ("report on the activities of the Māori Health Authority to Māori within the area covered").

This focus is consistent with the principles that require the entire health sector to provide services that reflect mātauranga Māori; engage with Māori (and others) to develop and deliver services and programmes that reflect their needs and aspirations, for example, by engaging with Māori to develop, deliver, and monitor services and programmes designed to improve hauora Māori outcome; and – most relevantly for the current discussion – to "provide opportunities for Māori to exercise decision-making authority on matters of importance to Māori".

Criteria for statutory recognition

The criteria for recognition as an iwi-Māori partnership board include that the organisation has taken reasonable steps to engage with the relevant Māori communities and groups in the area. The organisation's constitutional and governance arrangements must also demonstrate that: it has the capacity and capability to perform its functions as an IMPB; it will engage with, and represent the views of, Māori within the area; and Māori communities and groups in the area can hold the organisation accountable for the performance of its functions in relation to the area.

Useful aspects to draw on

- a new statutory model for Māori input into the planning and design of local services – with a wide range of functions (engagement, communication, evaluation, planning, performance monitoring, reporting)
- the focus on culturally appropriate service delivery and utilising mātauranga Māori
- of particular relevance, the statutory health sector principles include the requirement to "provide opportunities for Māori to exercise decision-making authority on matters of importance to Māori"
- the statutory appointment criteria include requirements for IMPBs to demonstrate engagement with local Māori communities and groups, and appropriate constitutional and governance arrangements (capacity and capability, representation of the local community, and accountability)

Indigenous child welfare tribunal – a Canadian model

Cowessess First Nation's Eagle Woman Tribunal

Canadian federal legislation was enacted in 2019, affirming and recognising the jurisdiction of indigenous peoples across Canada over child and family services.

A Saskatchewan First Nation has been legally transferred jurisdiction and control over its children in care. This marks the first time that control of child and family services has been restored to an Indigenous community under Canadian federal law. The Cowessess First Nation's Eagle Woman

Tribunal, the first quasi-judicial tribunal with indigenous jurisdiction over child and family services to be formally established in Canada, was launched in 2021.[15]

The Eagle Woman Tribunal is an internal judicial system that will review and make decisions regarding child welfare and other matters on appeal pertaining to Cowessess citizens. Chief Delorme in launching the Tribunal said to the Cowessess First Nation that it "will be our own justice system, one which will reflect our laws, our values, and what is important to the citizens. It will be different from the Provincial and Federal courts in many other important ways."

The Eagle Woman Tribunal will provide support for community resolution of disputes (through "the use of talking/sharing circles, healing circles, mediators and other facilitators") but if matters cannot be resolved informally, and a hearing is required before the Tribunal, the process will be different from the Courts. Specifically where it involves the best interests of a child, it will be an inquisitorial process (part of investigation), not an adversarial one. The Tribunal itself will be responsible for gathering evidence, asking questions and making sure it has all the information it needs to make a decision. This will eliminate the power imbalance and should result in better decisions in the best interest of Cowessess children.

The Tribunal is currently in its set-up phase with appointments being made (a mixture of On-Nation and Off-Nation Board members) and training underway.

Useful aspects to draw on

- although the Cowessess Tribunal is still in its early stages of development, it provides an important example of a statutory model for indigenous self-government in relation to child welfare
- it also provides an example of community-led informal (out-of-court) dispute resolution based on indigenous culture and values (followed where necessary by a Tribunal hearing)
- the Tribunal will use an inquisitorial (investigation) rather than adversarial process, again based on indigenous culture and values
- the Tribunal consists of both Cowessess and non-Cowessess Board members

In summary

The above examples illustrate that there are workable and effective models of inclusion of Māori decision-making already in place in our justice and health systems, on a continuum from service planning and delivery (Pae Ora IMPBs) to out-of-court resolution (Pae Oranga) and through to decisions on parole issues by a panel consisting of a legally trained person and community representatives (Parole Board). In terms of quasi-judicial decision-making, the Parole Board provides a useful model for shared decision-making in the family jurisdiction, including appointment criteria, panel constitution and hearing processes.

The common themes across the different models are an emphasis on partnership with local communities to deliver therapeutic (inquisitorial) justice, informed by te ao Māori and mātauranga Māori, to participants of all ethnicities.

The Canadian First Nation model of indigenous self-government in matters of child welfare is a further, significant step on the continuum and even if not adopted in Aotearoa New Zealand, does

[15] A total of 38 Indigenous governments, representing more than 100 communities, are seeking to exercise jurisdiction over child and family services under the federal legislation, and coordination agreement discussions were reported to be underway, as at July 2021.

have interesting and relevant features and indicates that more radical options exist. Developments in that jurisdiction will be followed with interest.

Mā pango, mā whero ka oti te mahi

Te Korimako