Te Puna Ora O Mataatua
Charitable Trust

SUBMISSION ON THE CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES (ORANGA TAMARIKI) LEGISLATION BILL

TE PUNA ORA o MATAATUA

Date:	1 March 2017
To:	Committee Secretariat Social Services Parliament Buildings **WELLINGTON** select.committees@parliament.govt.nz
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Te Puna Ora o Mataatua wishes to be heard in support of this submission at the Select Committee hearing.

EXECUTIVE SUMMARY

1. When introduced, the Children, Young Persons, and their Families 1989 Act (the **1989 Act**) was world leading. It followed the ground-breaking *Puao-Te-Ata-Tu* report. That 1989 Act remains good law with respect to tamariki Māori, although it has been hampered by poor practice on the part of Child, Youth and Family (**CYF**). In particular, the Departmental Disclosure Statement on the Children, Young Persons, And Their Families (Oranga Tamariki) Legislation Bill (the **Bill**) notes:[1]

> The RIS identifies the influence legislation can have on expectations and practice, but does not adequately demonstrate t**hat current legislation is an impediment to system actors taking a child-centred approach and therefore does not establish that legislative change is a necessary response**.
>
> [Emphasis added]

2. The Bill is arguably unnecessary to affect the change that our tamariki and whānau need and it represents a step backwards. Given that 60% of the children in care are Māori and Māori population numbers are increasing, 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. The Bill fails to deliver on any of these opportunities.

3. Te Puna Ora o Mataatua's primary concern with the Bill is the removal of priority of placement with whānau, hapū and iwi. Safety should not be compromised when placing tamariki but removing the priority of placement does not address the current issues and will risk another lost generation of indigenous children. The Bill does not provide the foundation for the positive change that we need in Aotearoa. 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, at its worst, unwilling to maintain those links). This is simply unacceptable and cannot progress.

4. Te Puna Ora o Mataatua also has concerns about the way in which kupu Māori are used without the corresponding tikanga, the reframed principles, the way in which Te Tiriti o Waitangi is provided for, the increased powers of the Chief Executive and the information sharing provisions. Collectively, these concerns raise serious issues for our tamariki Māori, whānau, hapū and iwi.

5. This submission is set out as follows:

   (a) Te Puna Ora o Mataatua;

   (b) Tikanga Māori – He Taonga He Mokopuna;

   (c) Puao-Te-Ata-Tu – 1988

   (d) Expert Panel Report – December 2015

   (e) Specific issues with the Bill; and

   (f) Conclusion.

6. Te Puna Ora o Mataatua opposes the Bill in its entirety.

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[1] Departmental Disclosure Statement, p.20.

7. Te Puna Ora o Mataatua wishes to be heard in support of this submission at the Select Committee hearing.

TE PUNA ORA o MATAATUA

8. Te Puna Ora o Mataatua, est. 1991, is a Charitable Trust based in Whakatane. It provides a broad range of integrated health and well-being services using a kaupapa Māori framework across Mataatua rohe.

9. It has a staff of 23 FTE and over 180 support workers.

10. Services include Whānau Ora, Social Housing, Mama and Pēpe, Kaumatua, Whānau Health Promotion and Home Based Support Services. It manages the Whakatane Medical Practice (Med Central) based in Kopeopeo.

11. Te Puna Ora o Mataatua also has Lead Professionals working with Vulnerable Children and has a senior staff member that sits on the Eastern Bay of Plenty Children's Working Team Referrals Panel.

TIKANGA MĀORI – HE TAONGA HE MOKOPUNA

12. The Bill needs to recognise the importance of the place of tamariki Māori within our whānau, hapū and iwi. Dr Rangimarie (Rose) Pere reminds us that:

> *He taonga te mokopuna, ka noho mai hoki te mokopuna hei puna mo te tipuna ka whakaaro tātou tātou ka noho mai te mokopuna hei tā moko mo te tipuna ana he tino taonga rā tōna. He mokopuna ra tātou, he mokopuna anō hoki ngā tipuna.*
>
> *[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.]*
>
> **Dr Rangimarie 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.

13. The Bill does not recognise tamariki Māori as taonga. It attempts to provide for the well-being of tamariki Māori whilst failing to recognise this is inextricably linked to their whakapapa and the whānaungatanga responsibilities of their whānau, hapū and iwi.

PUAO-TE-ATA-TU – 1988

14. In 1988, the Ministerial Advisory Committee on a Māori perspective for the Department of Social Welfare, reported its findings and recommendations, through the *Puao-Te-Ata-Tu* report, 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.[2] *Puao-Te-Ata-Tu* found, among other things, institutional racism within the Department of Social Welfare.[3]

15. The Committee recommended (inter alia):[4]

(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 person's 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);

(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 hap 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.

16. The Children, Young Persons, and their Families 1989 Act (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. The 1989 Act provides a solid framework for considering the best interests of tamariki Māori recognizing the importance of the child's place within its wider whānau, hapū and iwi. It is not the 1989 Act that has been the issue; the recommendations of Puao-te-Ata-tu were never fully resourced or operationalised. The mechanisms in the 1989 Act has suffered the same fate.

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[2]Ministerial Advisory Committee on a Maori Perspective on Social Welfare. (1988). *Puaoteatatu (Day break)*. Wellington, New Zealand: Department of Social Welfare, p.5 available at https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/1988-puaoteatatu.pdf

[3] Ibid.

[4]Ibid, pp.10-11.

17. The Committee's concerns and recommendations in1988 could equally be applied to the Bill now. This highlights, among other things, that the Bill is a step backwards from those recommendations articulated in Puao-Te-Ata-Tu.

18. Māori 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.

19. The Bill does not provide for the opportunities Whānau Ora provides. The Bill represents a step backwards; to the time pre-Puao-te-Ata-tu. It cannot be passed in its current form.

EXPERT 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.[5] The Panel made a number of findings including focusing on the need to place the child and the child's need for a "safe, stable and loving home" at the centre. However, the Panel also emphasized the importance of "identity, belonging and connection." These two concepts, "safe, stable and loving home" and "identity, belonging and connection" were seen as a package:[6]

> The overhaul of the system must place the child and their need for a stable, loving family at its centre. The Panel has confirmed the fundamental shift required to achieve better outcomes for vulnerable children is for the system to prioritise the earliest opportunity for a stable and loving family, and to enable all children to feel a sense of identity, belonging and connection.

21. The bill has given primacy to "safe, stable and loving home"; rather than treating that as a package with sense of identity, belonging and connection.

22. However, the Expert Panel did signal a change in direction noting in particular with respect to Māori whānau and children:

> 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.[7]
>
> 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.

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[5] Expert Panel Final Report – *Investing in New Zealand's Children and their Families* (December 2015).
[6] Ibid, p.10.
[7] Ibid.

> 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.[8] ….

23. Te Puna Ora O Mataatua agrees that the safety of our tamariki is paramount. The 1989 Act also recognizes this but provides for the place of whānau, hapū and iwi more strongly particularly when it comes to placement of our tamariki. Yes, a badly functioning whānau can be dangerous. However, the wider whānau, hapū and iwi should be looked to provide an alternative home for a tamaiti in need of such a home. And, the struggling whānau must be provided with support to make the changes required to be able to focus on their tamariki. The new Bill removes priority of placement based on whakapapa, reduces the assistance provided to whānau and has the risk of enabling permanent removals where the 1989 Act has specific provisions about return. Reading the Expert Panel report on the whole, it does not appear that they would have advocated for the current emphasis in the Bill.

24. Through the Expert Panel's process, the Panel heard from a range of people including tamariki Māori who emphasised the importance of both understanding, and being surrounded by, their whakapapa. One child emphasised:[9]

> Dear Anne Tolley. When you read the final report over Christmas, I'd like you to think about the importance of keeping whānau connections, to keep the child's identity intact and supply them with the support needed to do so. This is important, as a child should know where they are from, where they come from, and know that there people out there who love them. This identity is not just where the child comes from and what culture they are; it is everything that makes them who they are.

25. This emphasis has been lost in the Bill with whakapapa and whānaungatanga being subservient to the notion of a "safe, loving and stable home" rather than recognised as an integral part of it.

26. The Expert Panel also stressed the importance of forming strategic partnerships with iwi:

> 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.[10]
>
> …
>
> 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.[11]
>
> ….
>
> 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

[8] Ibid.
[9] Hansard, Marama Fox, 13 December 2016.
[10] Ibid, p.11
[11] Ibid.

> be recognised and valued. These organisations have access and influence beyond the scope of any department and are prepared to use this for the 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.…[12]

SPECIFIC ISSUES WITH THE BILL

27. Te Puna Ora o Mataatua supports the concept of a "safe, stable and loving" home for our tamariki. However, that concept should not be separated from whakapapa, and providing for "identity, belonging and connection" for tamariki Māori. Our specific comments on the Bill are based on that premise.

28. In short, our concerns with the Bill are:

    (a) The use of kupu Māori within the Bill without the corresponding tikanga and appropriate weight [clause 4, new section 2 and throughout]

    (b) Inadequate recognition of Māori in the purposes [clause 6, new section 4]

    (c) No obligation to include in decision making processes [clause 8, new section 5]

    (d) Inadequate recognition of the principles of Te Tiriti o Waitangi [clause 12, new section 7A]

    (e) The reduction in assistance for whānau, hapū and iwi [clause 13, new section 13]

    (f) Removal of priority of placement for tamariki with whānau, hapū and iwi [clause 13, new section 13]

    (g) Further powers of the Chief Executive in Family Group Conferences [clause 18, new section 18AAA]

    (h) Wide-reaching information sharing provisions [clause 38, new sections 65A to 66O]

    (i) No explicit reference to Whānau Ora

29. Te Puna Ora o Mataatua also oppose naming the new Ministry the "Ministry for Vulnerable Children". Te Puna Ora o Mataatua suggests simply naming the Ministry – *Oranga Tamariki*.

30. If these issues are not remedied, the risks for Māori tamariki, whānau, hapū and iwi are grave. Te Puna Ora o Mataatua has included a draft supplementary order paper as an **Appendix** to this submission that addresses our primary issues with the drafting.[13] This draft supplementary order paper is without prejudice to Te Puna Ora o Mataatua's position that drafting in the current section 5 and 13 (in particular) in the

[12] Ibid, p.13.
[13] Given the complexity of the proposed new regime, we have not suggested specific amendments to the information sharing regime. Our issues with that regime are set out in the body of our submission.

1989 Act should be retained. However, in the event that the Bill retains the majority of its form through the Select Committee process, Te Puna Ora o Mataatua have provided some suggested amendments to address its key issues.

Use of kupu Māori without the corresponding weight [section 2]

31. Te Puna Ora o Mataatua supports the inclusion of kupu Māori (Māori terms) within the Bill, specifically mana tamaiti (tamariki), whakapapa and whānaungatanga. However, our support is conditional on two matters:

    (a) those kupu having appropriate weight in the Bill; and

    (b) the definitions of those terms being correct.

32. Neither of those conditions is currently satisfied. In particular, the kupu Māori are included but not given appropriate weight in the Bill; these matters cannot simply be overridden by other considerations. They need to be given determinative weight, acknowledging that these matters are consistent with the best interests of the child.

33. Te Puna Ora o Mataatua support Dr Pere's view, expressed at paragraph 12 of this submission, that recognizes the importance of the place of tamariki Māori within our whānau, hapū and iwi. Any definition of kupu Māori, such as mana tamariki, in this context needs to provide for this view.

Inadequate recognition of Māori in the purposes [section 4]

34. Although we support some of the principles of contained in clause 6 (for example, supporting families, whānau hapū, iwi to enable them to provide a safe, stable and loving home for, and meet the needs of, their children and young people) there are a number of concerns with the remaining drafting:

    (a) In addition to the reference to families and family groups in the introductory paragraph, whānau, hapū and iwi should be included

    (b) Section 4(c) – identifying child and young people "who come to the attention of the department" is too broad and should be limited to those children and young people "who are in the care" of the department. If the phrase is to remain it needs to be defined, particularly in light of ss17(2A) and s18AAA, which authorises State intervention in the lives of children, young people, whānau, hapū, iwi where an investigation has been conducted and a conclusion reached that the child or young person is not in need of care and protection.

    (c) Section 4(d) – the term 'usual caregiver' needs to be defined particularly as the 'usual caregiver' assumes importance (over and above whānau, hapū, iwi) in s13.

    (d) Section 4(e) – This provision needs to include 'maintaining' the relationship between the child or young person and their whānau, hapū, iwi particularly given the removal of the placement priority in favour of whānau, hapū, iwi.

    (e) Section 4(j) – This provision provides the basis for State intrusion and access

to information in circumstances where an investigation was completed and a conclusion reached that the child or young person was not in need of care and protection but the State (or its delegates) could access the information anyway. This appears to be a breach of privacy. Given the statistics regarding Māori over-representation, Māori (whānau, hapū, iwi) are likely to be the subject of a greater number of information sharing requests without the State (or its delegates) having to have anything other than a 'gut feeling'. This would seem to be setting a dangerous precedent.

No obligation to include in decision making [section 5]

35. 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;

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

36. 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 whānaungatanga.

37. 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; and

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

Inadequate recognition of importance of Treaty [section 7A]

38. Te Puna Ora o Mataatua does not support the principles of the Treaty of Waitangi being limited to the duties of the Chief Executive:

    (a) there must 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.

39. Te Puna Ora o Mataatua recommends a stand-alone section based on section 8 of the Resource Management Act 1991 that requires all persons exercising functions and powers under the Act to "recognise and provide for" a practical commitment to the Treaty of Waitangi.[14] 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.

40. The Expert Panel held that strategic partnering involves:[15]

(a) joint planning and mutual trust,

(b) clear governance processes,

(c) transparent performance metrics and reporting,

(d) collaborative risk management and issues resolution, and

(e) multi-tiered relationships and information exchanges.

41. Although the Bill provides for the Chief Executive of Oranga Tamariki to seek to form strategic partnerships, it frames that partnership at a service provision level; strategic partnership is far broader and needs to also be functioning at the highest levels of both the iwi and Oranga Tamariki.

Limited assistance and removal of priority of placement [section 13]

42. 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. 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;

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

(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; and

(d) if they cannot remain with, or be returned to, whānau, hapū, or iwi then

[14] 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").
[15] Expert Panel Report, p.65.

priority should be given to their hapū or iwi, and if not possible then to Māori, and if not possible, then to non-kin.

43. The Bill removes these principles, with the exception of assistance provided to whānau, hapū, and iwi (although this principle is amended to assistance before the removal of a child or young person, unless it is unreasonable and impracticable to do so). There are two primary issues with this:

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

44. This goes to the core of our opposition to the Bill. 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 whānaungatanga.

45. Te Puna Ora o Mataatua submit that the current section 13 should be retained in the Bill. If the current section 13 is not able to retained, as a middle ground, the Bill must be amended to provide for:

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

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

46. Te Puna Ora o Mataatua has provided some alternative drafting to provide for this in the annexed draft Supplementary Order Paper.

Information sharing regime [clause 38, new sections 65A – 66O]

47. The Bill introduces a new information sharing regime. The Bill broadens the scope of who would be captured by the information sharing provisions. Pursuant to section 2(1) of the privacy Act 1993, Te Puna ora o Mataatua would be captured as an agency subject to the new regime.

48. Te Puna Ora o Mataatua's primary concern with the regime is its wide-reaching nature and its potential to deter those in need of support from engaging with support providers such as Te Puna Ora o Mataatua. Although Te Puna Ora o Mataatua support the principle that information should be shared across agencies to ensure the safety of our tamariki, the proposed drafting is too wide. There is a real risk that, due to Te Puna Ora o Mataatua being captured by the new definition, whānau that would normally use our services could be deterred from doing so. We cannot accept that risk particularly due to the positive change these whānau are making for themselves.

49. We understand that the Privacy Commissioner has also raised this concern as an issue; we support the Privacy Commissioner's concern in that regard and his

additional concerns, in particular:[16]

(a) The opposition to new section 66, which would broaden the range of agencies subject to the regime (that would include Te Puna Ora o Mataatua), on the basis that the proposed extension is disproportionate given the breadth and nature of the information that can be obtained and that the information can then be further shared (with few exceptions) with a broad range of interests.

(b) that information can be compulsorily acquired under new section 66 even when the holder believes disclosure is not in the child's best interest; and

(c) that the new provisions will be harder to understand than the current regime (noting that the new regime has been developed ahead of a fully designed operating model for the new Ministry).

50. Te Puna ora o Mataatua recommend that the Privacy Commissioner's concerns, particularly those noted at paragraph 48 of this submission, be addressed in the Bill.

CONCLUSION

51. Speaking the context of the Oranga Tamariki reform, Dame Tariana Turia in her 2017 Waitangi Rua Rautau address on 29 January 2017, strongly emphasized the importance of whakapapa in the context of this reform and called us all to action for our tamariki mokopuna:[17]

> *Our children are telling us – the universally indigenous themes of identity, connection and belonging are the story that shapes their lives. Knowing who we are; who we connect to; our special songs, our places, our ancestors, is all about whakapapa; whānau, whenua, whare.*
>
> *It matters. It is about faith; about belief; about love. A faith in our whānau; a belief in principles that help us to be better people; a love for the generations that will create and shape the world as we want to be in 2040.*
>
> *…*
>
> *It is not time to be timid. We must defend the whakapapa rights and responsibilities of whānau, hapū and iwi to care for their own mokopuna.*
>
> *We must learn well the lessons left for us – to protect and respect the divine spark of life that will be the message we gift to future generations.*
>
> *We are required to act.*

52. In his speech at Orakei Marae on Waitangi Day 2017, the Prime Minister, the Right Honourable Bill English, confirmed that the current reform is a point of real tension between the Government and whānau, hapū and iwi currently. In particular, the Prime Minister acknowledged that the Government doesn't have the answers yet and emphasised, in particular, that the whānau ora approach provides a solution to this

[16] Summarised in Appendix one of the Departmental Disclosure Statement, 8 December 2016 available at http://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2016-224.pdf.
[17] Dame Tariana's speech is available at http://www.maoricouncil.com/2017/01/31/2017-waitangi-rua-rautau-te-herenga-waka-marae-hon-dame-tariana-turia/.

issue:[18]

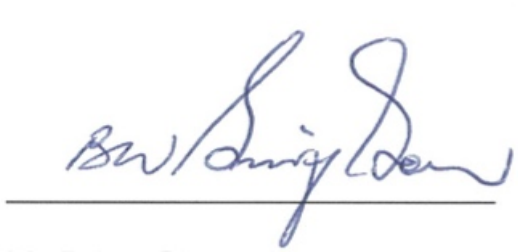
> *And of course there are differences and tensions. Right now we are having an argument over one of the things that matters most, our tamariki and how we're changing what we are doing for our most vulnerable children, in a radical way, because we've done such a poor job in the past.*
>
> *…*
>
> *We haven't found yet, the answers to that issue, even in the legislation. But we have a relationship based on respect, not agreement. Based on mana and mana enhancing ways of behaving.*
>
> *…*
>
> *Another example is Whānau Ora, an approach I've supported from the day Dame Tariana Turia put it forward, because I've shared the view, despite criticism from media and opposition parties, that actually any whānau has some spark of hope which we can support, which can grow because that is who it is in the end that fixes the whānau.*
>
> *It is not the department of social welfare. It's not the Ministry of Health. Much as we have good intentions, the truth is we have not realised the promise to our tamariki yet of protection from violence, a safer community, a good education and a type of support that encourages aspiration and not dependency.*
>
> *For many we have, but not for everybody and for the ones where we haven't met that promise, they are not just a cost of an otherwise good system, they represent a failure.*
>
> *And in my time, 30 years of public policy, whānau ora represents the next, or the best, the truest, the most honest approach to dealing with those and supporting those who we haven't dealt with well.*
>
> *It doesn't mean that change is going to happen easily, of course it won't. But the government has to get use to the idea that it isn't just in and out in a crisis. It is 20 years, 30 years.*
>
> *As I said to the Iwi Chairs Forum the other day our Māori tamariki have an advantage because when government goes to change its ways it's got someone to talk to about it.*
>
> *Someone who can see that flame and fan it, someone that has a collective reservoir of hope on which whānau can draw.*
>
> *Some of our Pakeha whānau don't have that advantage.*
>
> *So that's why Whānau Ora is a solution that can, in the long run, work.*

53. Our tamariki are our taonga. Our tamariki must be seen in the context of their whānau, hapū and iwi; they cannot be viewed in isolation. Whakapapa provides the link between our tamariki mokopuna to their tipuna. This is a fundamental tenet within Te ao Māori. The Bill, as currently drafted particularly with respect to the removal of the placement priority, puts this fundamental tenet at risk.

[18] The Right Hon. Bill English's speech is available at https://www.beehive.govt.nz/speech/waitangi-day-breakfast-speech-orakei-marae.

54. The Bill must not be passed in its current form. We have included a draft supplementary order paper that proposes amendments to the Bill to address our primary concerns. This draft supplementary order paper is without prejudice to Te Puna Ora o Mataatua's position that drafting in the current section 5 and 13 (in particular) in the 1989 Act should be retained. The supplementary order paper is also focused on Te Puna Ora o Mataatua's primary concerns with the Bill.

55. We look forward to addressing our concerns with the Select Committee in person.



Mr Brian Simpson
Acting Chairperson
Te Puna Ora o Mataatua

No [insert number]

House of Representatives
Supplementary Order Paper

[Insert date]
Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill

Proposed amendments

Hon Anne Tolley, in Committee, to move the following amendments:

New clause 5 (following clause 4 – Interpretation)
To insert new clause 5 as follows:

> **Treaty of Waitangi**
>
> In achieving the purposes of this Act, all persons exercising functions and powers under it, shall recognise and provide for the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Clause 6
In clause 6(e) after strengthening insert "and maintaining".

Clause 8
New sub-clauses 8(v) and (vi)
To insert, after clause 8(iv) (after line 30 on page 12), the following:

> (v) the mana tamaiti (tamariki) and well-being of a child or young person who is Maori is protected by recognising the whakapapa and whanaungatanga responsibilities of their whanau, hapu, and iwi:
>
> (vi) the importance of whakapapa and whanaungatanga of a child or young person who is Maori is recognised by ensuring that whenever possible, their whanau, hapu, and iwi should participate in those decisions:

In clause 8(b), to insert "whanau, hapu and iwi" after "family" in line 11 on page 13.
In clause 8(b)(iii), to insert "hapu and iwi" after "whanau" in line 21 on page 13.
In clause 8(b)(v):
to insert "wherever possible" before "their family" in line 25 on page 13; and
to delete "can" and to insert "should" in line 25 on page 13.

Clause 12
To insert, “non-exhaustive” before “duties” at line 36 on page 15.
To insert, “for” after “provide” at line 37 on page 15.
To delete, “seeks to” at line 8 on page 16 and to replace with “will”.
To delete, “contribute to setting” at line 14 on page 16 and to replace with “set”.
To delete, “provide opportunities for” at line 19 on page 16 and replace with “enable”.

Clause 13
New sub-clauses 13(2)(a)
To insert, as a new sub-clause 13(2)(a) at line 1 on page 17, the following:

> (a) that the primary role in caring for and protecting a child or young person lies with the child’s or young person’s family, whanau, hapu, iwi, and family group, and that accordingly -
>
> (i) a child’s or young person’s family, whanau, hapu, iwi, and family group should be supported, assisted, and protected as much as possible; and
>
> (ii) intervention into family life should be the minimum necessary to ensure a child’s or young person’s safety and protection:

New sub-clauses 13(2)(c) and 13(2)(d)
To insert, after clause 13(2)(b) (after line 8 on page 17), the following:

> (c) any intervention with the whānau of a child or young person who is Māori should recognise and uphold the mana tamaiti (tamariki) and the whakapapa of that child or young person and the relevant whanaungatanga rights and responsibilities:
>
> (d) where a child or young person is at risk of being removed from their immediate family, whanau, or usual caregivers, the child’s or young person’s usual caregivers, family, whanau, hapu, iwi, and family group should, wherever possible, be assisted to enable them to provide a safe, stable, and loving home to the child or young person:

New subclauses 13(2)(l)(iii)-(v)
To insert, after clause 13(2)(l)(ii) (after line 29 on page 18), the following:

(iii) wherever practicable, the child or young person should be returned to, and protected from harm within, that family, whanau, hapu, iwi, and family group; and

(iv) where the child or young person cannot immediately be returned to, and protected from harm within, his or her family, whanau, hapu, iwi, and family group, until the child or young person can be so returned and protected he or she should, wherever practicable, live in an appropriate family-like setting—

(A) that, where appropriate, is in the same locality as that in which the child or young person was living; and
(B) in which the child's or young person's links with his or her family, whanau, hapu, iwi, and family group are maintained and strengthened; and

(v) where the child or young person cannot be returned to, and protected from harm within, his or her family, whanau, hapu, iwi, and family group, the child or young person should live in a new family group, or (in the case of a young person) in an appropriate family-like setting, in which he or she can develop a sense of belonging, and in which his or her sense of continuity and his or her personal and cultural identity are maintained:

New clauses 13(2)(m)-(n)

(m) where a child or young person cannot remain with, or be returned to, his or her family, whanau, hapu, iwi, and family group, the principle that, in determining the person in whose care the child or young person should be placed, priority should, be given to a person—

(i) who is a member of the child's or young person's hapu or iwi (with preference being given to hapu members), or, if that is not possible, who has the same cultural background as the child or young person; and
(ii) who lives in the same locality as the child or young person: