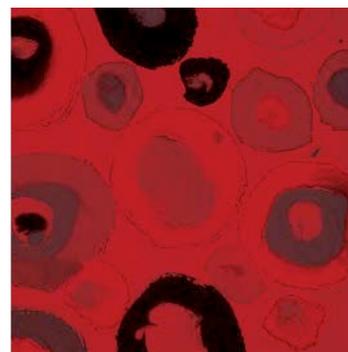


# Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill: Children's Commissioner's comments on proposed section 13

- 1 There are some admirable care and protection principles outlined in proposed section 13:
  - > The strong focus on the voice and needs of the child (this is currently absent in the Act's principles);
  - > The focus on safe, stable and loving placements for children as opposed to just a 'safe' placements;
  - > The inclusion of the principles that, where practicable siblings should be placed together;
  - > Intervening early (with consent from a child and their whānau) to prevent serious or chronic long term harm;
  - > That families, whānau, hapū, and iwi will be assisted to provide a safe, stable and loving home for a child when the child is at risk of being removed from their usual caregivers.
- 2 We are particularly encouraged by the inclusion of new section 13(2)(c) which sets out that where a child or young person is at risk of being removed from their usual caregivers, their whānau, hapū, iwi and family group should be assisted to provide a safe, stable and loving home to the child or young person in accordance with whakapapa and whanaungatanga. This is very important because in almost all cases, it will be in the child or young person's best interests to remain in the care of their family, whānau, hapū, iwi or wider family group. This will be particularly important for disabled children.
- 3 This will place a significant and compelling new obligation on the State. We should remember that past experience with CYF suggests that this obligation will not be quickly met. Consistently achieving this in practice will require considerable systems and practice change and a strong focus on workforce development. Practically assisting the child's whānau, hapū, iwi or wider family group to provide them with a safe, stable and loving home will require extensive whakapapa searching, hui-a-whānau or wider family group meetings, and earlier FGCs (as anticipated in proposed section 18AAA), all of which require considerable time, effort, and resource. We found in our most recent thematic review into how well CYF sites prepare for FGCs that there is a long way to go to achieve the level of service change required. This will be a significant new challenge for Oranga Tamariki.
- 4 We also have some significant concerns about proposed care and protection principles. Overall, in our view, the proposed section 13 as currently drafted does not set out clearly enough the sequential steps that should be taken to determine the best interests of the child



The Children's Commissioner represents the **1.1 million people** in Aotearoa New Zealand under the age of 18, who make up 24 percent of the total population.

The Commissioner has the statutory role to advocate for their interests, ensure their rights are upheld, and help them have a say on issues that affect them.

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or young person, first when they are *at risk* of being removed from their usual caregivers, and subsequently if/when they *are* removed from their usual caregivers. In blending these two steps together, (the effect of the Bill as currently drafted), the important role of the child or young person's family, whānau, hapū, iwi and wider family group in decisions about their care has been confused. There is a risk that as a result, they may only be involved in decisions about when the child or young person is at risk of removal from their usual caregivers, but not when a decision has been made to remove the child.

- 5 Furthermore, we note inconsistencies and confusion in this section as currently drafted in the application of the principles of mana tamaiti/tamariki, whakapapa and whanaungatanga. Proposed section 13(2)(c) applies to all children regardless of ethnicity, yet makes reference to whakapapa and whanaungatanga, which elsewhere in the Bill are defined as only applying to Māori children. As we have noted elsewhere in this submission, we consider that these principles should have universal application, and we have suggested redrafting the section accordingly.

## Recommendation to improve section 13

We recommend section 13 is redrafted as follows to:

- > a) differentiate decision-making before and after a child is removed from their usual caregivers
- > b) apply the principles of mana tamaiti/tamariki, whakapapa and whanaungatanga to all children, and
- > c) affirm the role of the child's family, whānau, hapū, iwi, and family group in decision-making both prior to, and following, a decision to remove a child from their usual caregivers.

### **Proposed redrafted section (additions or new placements in bold)**

*(2) In determining the well-being and best interests of the child or young person, the court or person exercising powers referred to in subsection (1) must be guided by, in addition to the principles in sections 4(A)(1), 5, and 5A, the following principles:*

**(a) When the child or young person is at risk of being removed from their usual caregivers:**

**(i) any intervention with the whānau of a child or young person should recognise and promote the mana tamaiti (tamariki) and the whakapapa of that child or young person and relevant whanaungatanga rights and responsibilities:**

*(ii) intervention should occur early to improve the safety and well-being of children, young persons, and their families and to address risk of future harm (including the risk that a child or young person may offend or re-offend, or not achieve their developmental potential):*

*(iii) interventions with families should, where possible, occur with the consent of the child or young person concerned and their parents, guardians, or usual caregivers, and should reflect the child's or young person's views and input:*

*(iv) where a child or young person is at risk of being removed from their immediate family, whānau, or usual caregivers, the child's or young person's usual caregivers, family, whānau, hapū, iwi, and family group should, unless it is*

*demonstrably unreasonable or impracticable in the circumstances, be assisted to enable them to provide a safe, stable, and loving home to the child or young person in accordance with whakapapa and whanaungatanga:*

*(v) where there is a risk that a child's or young person's needs for a safe, stable, and loving home may not be met by their usual caregivers, those needs should be considered and addressed concurrently with interventions to support the child or young person to remain with those caregivers:*

**(b) When the child or young person is removed from their usual caregivers:**

***(i) decisions in relation to children and young persons should recognise and promote the importance of mana tamaiti (tamariki), whakapapa, and whanaungatanga:***

*(ii) powers to intervene under this Part without the consent of the persons concerned should be exercised only when necessary and when there is no other reasonable way to safeguard and promote a child's or young person's well-being:*

*(iii) a child or young person should be removed from the care of their usual caregivers only if there is a serious risk of physical or emotional harm to them:*

***(iv) the child's or young person's wider whānau, hapū, iwi, and family group should, unless it is demonstrably unreasonable or impracticable in the circumstances, be assisted to enable them to provide a safe, stable, and loving home to the child or young person in accordance with whakapapa and whanaungatanga:***

*(v) decisions about placement should be guided by the child's or young person's best interests, and the court or person making the decision should seek the views and understand the needs of the child or young person:*

*(vi) children or young persons should be in a placement in which they will be safe and protected from harm:*

*(vii) stability and continuity of placement are important considerations when making placement decisions:*

***(viii) the child or young person's age and stage of development are important considerations when making placement decisions:***

*(ix) if practicable, a child or young person should be placed with their siblings:*

*(x) children or young persons should be placed where they can develop a sense of belonging and attachment, and where their personal identity and cultural identity are maintained:*

*(xi) the whanaungatanga and the whakapapa of the child or young person are important and should continue to be honoured on an ongoing basis wherever the child or young person lives.*

*(c) where a child is considered to be in need of care and protection on the ground specified in section 14(1)(e), the principle set out in section 208(g):*

*(d) the well-being and best interests of any child or young person, in general, take precedence over any duty of confidentiality owed by any person in relation to that child or young person or to any person who is a family member of that child or young person or in a domestic relationship with the child or young person (within the meaning of section 4 of the Domestic Violence Act 1995).*