



TE TANIWHA I TE AO TURE-Ā-WHĀNAU

WHĀNAU EXPERIENCE OF CARE AND PROTECTION
IN THE FAMILY COURT

Dr Amohia Boulton, Maia Wikaira, Lynley Cvitanovic & Tania Williams Blyth

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Whānau Experience Of Care And Protection In The Family Court

Authors:

Dr Amohia Boulton, Maia Wikaira, Lynley Cvitanovic & Tania Williams Blyth

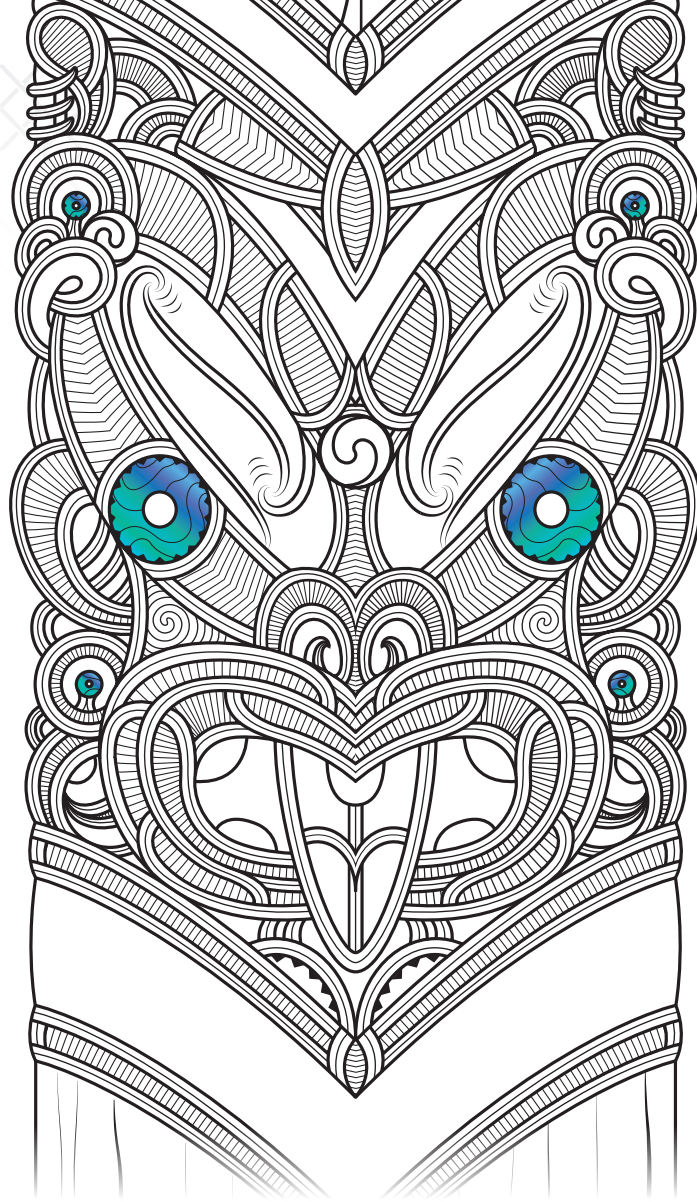
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HŪTIA TE RITO O TE HARAKEKE, KEI WHEA TE KORIMAKO E KŌ E?

Ko te mihi tuatahi kei ngā whānau i whakawherawhera i ō rātou kokonga ngākau ki a mātou, kia kitea atu ai te mamae o roto. He mea waituhi tēnei ripoata ki o koutou roimata. Tino kore rawa atu ēnā roimata e pau mō te riringi noa iho nei. I ringihia kētia kia horoi atu i ngā whatu kāpō, i ngā taringa turi o te hunga kei a rātou te mana whakahaere o te ture – ngā kaiwhakawā, ngā āpiha o te kāwanatanga, me ngā rōia.

Nā reira e kore e mimiti te aroha ki a koutou kei ngā whānau.

Heoi anō ko te mihi tuarua kei ngā mana whakahaere o te ture. Tēnā koutou e te hunga kei a koutou tonu te mana whakarewa ake i ngā whānau ki runga, pēhi iho rānei ki raro. He mea nei e hora nei, ko ngā kupu ā ngā whānau i riro i te ringa haehae o te ture. Inā hoki, i riro i o koutou nā ringa.

Kia areare ō koutou whatu, ō koutou taringa, otirā, ō koutou ngākau ki ngā aurere ā ngā whānau e tangi atu nei.

Āpiti hono, tātai hono, te hunga mate ki a rātou; tēnā tātou e te hunga ora.

IF THE YOUNG GROWTH OF THE FLAX IS PLUCKED OUT, WHERE WILL THE BELLBIRD SING ITS SONG?

Our gratitude and greetings must go first to the whānau who cut open their hearts so that we could see and understand the pain within. This report is written with your tears and they will not be wasted. They will wash open the blinded eyes and the deafened ears of those who exercise power over you according to law – the judges, the government officials and the lawyers.

Our aroha for you and your gift of honesty will never dim with time.

Secondly, we greet those to whom this report is directed – that is, the officials and professionals who decide whether whānau are strengthened and maintained according to law or suppressed by it. In this report we lay out before you the lived perspectives of whānau experience of the work of the law. That is, to be blunt, of your work.

May your eyes and ears, and most importantly, your hearts be open to their perspectives.

And may the dead be joined with the dead, and may we, their living faces, never forget their presence among us.

KŌRERO WHAKATAKI

The “care and protection” framework in Aotearoa is broken and our whānau are being torn apart. The tragic and disproportionate number of tamariki Māori in state care tells us this. Change is long overdue and every part of the care and protection system needs to do better.

The Family Court is an important cog in this system. The Family Court has the tools in legislation and the discretion to effect positive and transformative change. We are confident that now is the moment for the Family Court to take action and be part of the solution.

The Te Taniwha i te Ao Ture-a-Whānau Report provides a vital piece of the puzzle: the voice of Māori. These voices are clear. They reiterate how foreign, inaccessible and disconnected the system is their reality. They also clearly set out the issues and identify solutions. This is a powerful and useful report. The suggested cultural, practical and procedural changes would not only make a fundamental difference in improving how whānau experience the Family Court, but also go towards improving outcomes for whānau and the lives of our tamariki.

One of the proposed solutions is a Te Tiriti consistent partnership model, where care and protection proceedings are handled by a Board comprising 50% Māori. This type of transformative initiative is not new, but it is required to circuit-break the status quo.

We commend those that shared their experiences and we offer the following whakatauaiki:

*Mā te rongo ka mōhio; mā te mōhio, ka mārama;
mā te mārama, ka mātau; mā te mātau, ka ora.*

*From listening comes knowledge; from knowledge comes understanding;
from understanding comes wisdom; from wisdom comes well-being.*


The voices of these whānau are rich and are telling us how to fix the problem. We support their observations and recommendations for change.



Natalie Coates
Partner, Kāhui Legal



Jacinta Ruru
Professor, University of Otago



Horiana Irwin-Easthope
Partner, Whaia legal



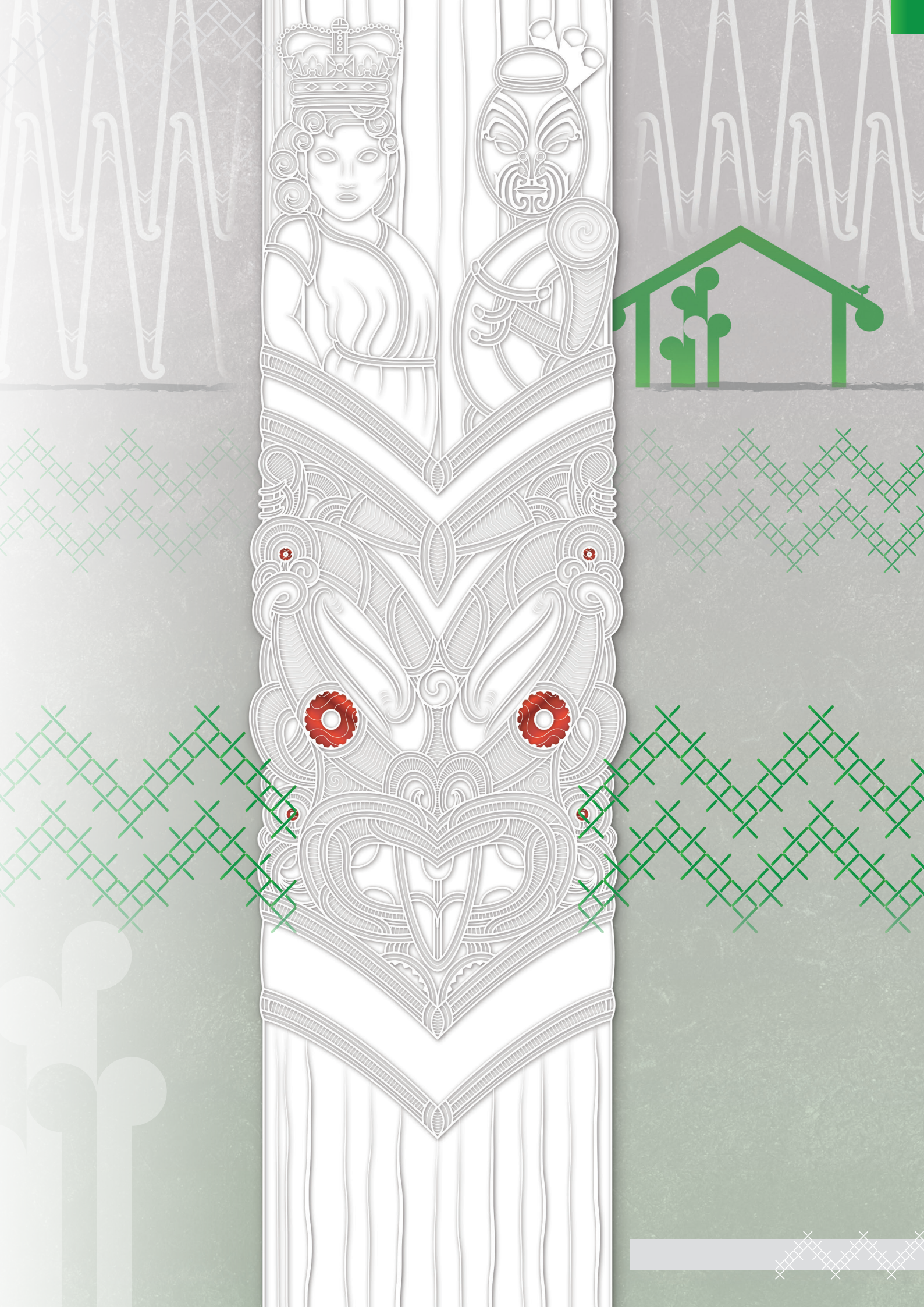
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OVERVIEW

This report covers the experiences of whānau Māori in Family Court proceedings under the care and protection provisions of the *Oranga Tamariki Act 1989* ("the Act"). Care and protection proceedings involve decisions about the risk of harm to children and young people, including whether they should be taken into state care – that is, into the custody of the Chief Executive of Oranga Tamariki.

The Family Court is the ultimate decision-maker determining when children and young people are placed in the care of the state. The Family Court is a specialist court with a unique jurisdiction that is both judicial and therapeutic (Beattie, 1978). The latter of these functions mandates that the Family Court use the law as a healing agent in addressing the issues before it. Therefore, under the Act, Family Court Judges have a moral and legal duty to administer justice in a way that reflects the wellbeing of the child or young person in the context of the family unit, or for tamariki Māori, their whānau, hapū and iwi.

The many reasons why whānau Māori come to the attention of the Court – including tamariki Māori in the Family Court – sit uncomfortably against the backdrop of New Zealand's history of colonisation. The effects of colonisation on Māori communities are well documented (Orange, 2004; Durie, 1998; Waitangi Tribunal, 1986). Reckoning with colonisation requires an acknowledgement that "for every generation born since facing widescale dispossession of lands, tikanga, language and social structures, Māori have been disproportionately represented among the poorest, most illiterate and most criminalised in Aotearoa" (Solicitor-General v Heta, 2018).

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). This suggests that the child protection system also reflects the significant social inequalities experienced by Māori. The legacy of loss and dispossession is compounded by the knowledge that there is an increased likelihood of poor long-term life outcomes for children who have been in state care (Ministry of Social Development, 2016).

The stories shared by whānau Māori of their experiences in the Family Court support the narrative of ongoing disadvantage, which begs the questions:

- If the Family Court considered the link between the over-representation of Māori children and young people in state care and protection, and whānau experiences within the Family Court, what would it do differently?
- What does the commitment to the principles of Te Tiriti o Waitangi look like in the Family Court?

Since 1989, the Act has highlighted the importance of making decisions regarding the care and protection of Māori children and young persons in the context of their whānau, hapū and iwi. In July 2019, "recognising mana tamaiti in accordance with tikanga Māori, whakapapa, and the practice of whanaungatanga" was added to the Act. Beyond express legislative reference, the 1997 High Court decision *Barton-Prescott* provides yet another tool for Family Court Judges to take a tikanga-informed approach. The decision confirmed that since "the family organisation of one of the Treaty partners can be seen as one of the things the Treaty was designed to protect, all Acts dealing with the status, future, and control of children must be interpreted as coloured by the principles of the Treaty of Waitangi, whether or not this is made explicit in the legislation" (*Barton-Prescott v Director-General of Social Welfare*, 1997).

¹ The *Oranga Tamariki Act 1989* was formerly the *children, Young Persons and their Families Act 1989*. The name was changed in 2017.

However, due to judicial interpretation of the “radical shift” (Boulton et.al, 2018, p.6) intended by amendments to family law legislation, opportunities to stem the tide of increasing disadvantage for Māori, have been missed. There also remains a distinct absence of Family Court jurisprudence that engages with Te Tiriti o Waitangi relative to care and protection matters in the manner envisioned by *Barton-Prescott*. The full potential of the latest legislative amendments, and the *Barton-Prescott* decision, will remain unrealised if the Family Court does not acknowledge that current practice is not working.

The challenge for the Family Court is not only to understand and apply the law, it must also listen to what whānau say about their Family Court experience. The research that forms the basis of this report provides first-hand insight into whānau experiences in the Family Court. Their message is clear: change must happen; it must be comprehensive, and it must happen urgently.

The New Zealand Government has recently announced a commitment of \$62 million to enable Family Court reform. This reform is to address the ever-increasing challenges in the Family Court for whānau seeking parenting and/or guardianship orders pursuant to the *Care of Children Act 2004*. This moment is a prime opportunity to extend the scope of change in the Family Court to include care and protection proceedings; it is a chance for “business as usual” to reflect a court that is responsive to the experiences of whānau, culturally competent (including the ability to understand key tikanga Māori concepts and engage in ongoing tikanga and te reo Māori education) and alive to the life cycle of family and social breakdown that, too often, is a causal factor for whānau Māori appearing before the court in care and protection proceedings (Doogue, 2019, pp. 9–10, 24). We have an opportunity to fulfil the obligations arising out of Te Tiriti o Waitangi, where the inclusion of Māori in creating or reforming the justice system has never previously been enacted (Hāpaitia te Oranga Tāngata, 2019).

The Family Court is not immune to the effects of the unprecedented global Covid-19 outbreak. The pandemic has brought about swift policy responses where possible, showing that the rigid and fixed nature of current practices is illusory. It has also

highlighted shortcomings in court systems, where the inability to maintain court processes led to a triaging of proceedings, with court participants suffering as a result. The impacts of Covid-19 are still a long way from being fully realised. However, what we can expect is that the systemic disadvantage experienced by Māori in the current system will be further exacerbated by Covid-19. The need – and opportunity – for change is now more urgent than ever.

We ask that the experiences of whānau shared in this research are received by the Family Court, the Government and iwi with an openness to listening and learning, and to taking action that rises to meet the call for change.

HEARING FROM WHĀNAU

Experiences of the Family Court in care and protection proceedings

From 8 October to 27 November 2019, 36 participants from whānau Māori from across Aotearoa were interviewed to talk about their experiences in care and protection proceedings in the Family Court.²

Data collection was conducted using an electronic questionnaire. The questionnaire included both closed and open-ended questions to elicit both statistical and anecdotal responses.

The questionnaire was designed to address a series of overarching research questions:³

- What do whānau like about the way the Family Court operates?
- What don't whānau like about the way the Family Court operates?
- What does the Family Court do to help whānau better engage with the court process?

While the statistical information provides a broad picture of whānau participant experiences, the stories provide a detailed and in-depth insight into how whānau felt about these experiences, in their own words.

SNAPSHOT OF WHĀNAU PARTICIPANT PROFILES

- 69% attended Family Court as parents
- 25% as grandparents
- 13% as extended whānau
- 8% as a child or young person
- 5.5% as support people
- 91% of whānau participants have been involved with the Family Court and Oranga Tamariki between 2015–2019
- 39% of whānau participants had been to the Family Court 7 or more times, and 58% had been 1–6 times
- Collectively, whānau participants had attended every Family Court region in the country

Experiences shared by whānau participants demonstrate significant pain points both before and during the Family Court care and protection proceedings.

BEFORE ATTENDING THE FAMILY COURT

NOTIFICATION OF FAMILY COURT PROCEEDINGS

Whānau participants talked about problems receiving notices of care and protection proceedings from the Family Court, highlighting the importance of communication from the court:

"Everyone deserves to know if there's anything going on about them. If they don't know they can't do anything. It takes away their rights."

"Because we should know when our whānau are going to court. We should be invited to participate and/or attend to awhi our whānau. We should know what's going on with our whānau so we can do stuff to awhi our whānau."

While all whānau participants felt that they should be notified of hearings in the Family Court, only two thirds had received notice (a letter) that their case was going to court:

"I only got letters sometimes. I missed court dates because I didn't know it was on. I always got letters saying I missed court, but not when the court case was on."

"The papers didn't have a date- it just said I had to get a lawyer within 7 days so I could file something in court."

"[We'd] been to court twice in the last month, but the Family Court changed the date and didn't tell us- we found out at court."

² A total of 47 whānau responded to the survey advertisement. Thirty-six whānau Māori participants were interviewed. Three whānau were not interviewed as their proceedings related to the Care of Children Act 2004. An additional eight whānau, identifying as Pākehā or European, asked to participate and were interviewed. Their responses are reported in a separate section of this report but do form part of the overall technical report.

³ See Appendix 3 for the full questionnaire.

EXPLANATION OF FAMILY COURT ROLES AND PROCESSES

Whānau participants were asked whether they knew, or had been told, about the Family Court processes, and the roles of the key people in the court.

Many participants (44%) were given no explanation about Family Court processes, though an equal number (44%) also received an explanation from their lawyer.

In many cases (44%) no one explained who was likely to be in the Family Court, nor what their roles were. 41.5% of the respondents received an explanation from their lawyer.

44%
did not know
the role of the
**Oranga Tamariki
Social Worker**

27.5%
did not know
the role of the
Lawyer for the Child

52.5%
did not know
the role of the
Oranga Tamariki lawyer

25%
did not know
the role of
their own lawyer

44%
did not know
the role of the
Court Registrar

13.5%
did not know
the role of
the Judge

WHĀNAU CONFIDENCE WHEN ATTENDING THE FAMILY COURT

The majority of whānau participants (69%) indicated that they did not feel confident attending the Family Court because they did not understand the processes, roles and legal language used, and felt excluded in the preparation for attendance at Family Court.

"[We needed] a better understanding of the proceedings ahead of us, actually knowing what we were there for and the sections that the children were under - having more information of how the Family Court is operated. Just having more information around what we needed to be doing in the proceedings."

"Better communication and earlier; explaining the whole court process and someone being allocated to me. Everyone was saying different things and it was frustrating. Some people don't understand the difference between the District court and the Family Court."

IN THE FAMILY COURT

WHĀNAU UNDERSTANDING IN COURT

When asked whether they understood what was happening during the Family Court session, 64% of whānau participants reported not understanding or understanding very little of what was going on.

"Just going into that room with those other people in there. They know why they are there and what they're doing. I didn't know what to do. I felt quite intimidated. They all started talking and I didn't understand the language that they are speaking."

"I don't know if I was allowed to [ask the judge questions]. Sometimes court would take 5 minutes, they made their choices and they don't ask anything. Court's finished and you don't know what's happened. You feel like a real dick."

"Because of the way they were talking, they were so fast, there were so many big words. You're trying to put your hand up and the opportunity has gone."

"The whole thing of it was just too fast. It was 1, 2 and we were in the middle of everything. Not getting a chance to maybe speak a little bit. It was the worst thing I've ever been to in my life."

COMMUNICATING WITH THE FAMILY COURT JUDGE

The majority of whānau participants (80%) said that they had wanted to talk to the judge during Court, but in only 33% of the total cases did the judge ask whānau participants if they wanted to say anything.

"I put my hand up to say something and the judge said, 'can we hurry up with this, I haven't had lunch'. I had my Pop with me and he said, 'excuse me your Honour'. The judge just said that the 'next court date is ..., court's adjourned'. He then got up and walked out. I just started crying. He just ignored us and took no notice whatsoever."

"The first time I asked I was told not to – I got shut down."

"[I could not ask] because they kept talking; the judge, the lawyers, Oranga Tamariki. You feel like the lawyers and the judge are their own social group and you can't interject into that. You feel like a bit of a bystander - it's

about you but nobody is talking to you. Nobody cares about how you feel about the whole thing."

"Well, by the time they've said something, and you talk to your lawyer, they've moved on. The judge was trying to fit everything in and talk to the lawyers. If you have a question you can't say it. I don't understand some of these processes especially when you have questions, you can't say it there and then and you know you have to wait for the next date."

"No, you can't say anything. I don't think the whānau have any rights to speak, that's my understanding. They speak to the lawyers and the lawyers speak back. The rights for whānau need to be explained."

Whānau participants that were given the opportunity to speak with the judge said that it had made them feel acknowledged and more informed.

"Because he asked me to do an affidavit to clarify the things I was saying and he explained that it was because he might not be the judge next time and that we needed to provide any judge with all the information that we could, so that they could make a decision."

"[Because of the judge's] responses and her asking more questions – she was engaging with the whānau."

DECISION-MAKING IN THE FAMILY COURT

When asked whether whānau participants felt that they were included in the decision-making process in the Family Court, the majority (72%) felt that they were not included.

"They wouldn't involve me; they wouldn't give me an opportunity to be involved...so I was never involved in the court decisions. I never got the opportunity to present my thoughts or kōrero."

"It was just, they would all get together, say what they say to the judge and then usher us out of the court quickly. We never got to know what the outcome was. We never knew what was going on."

"Because I think it's that formal process. It's quite intimidating being in there. My lawyer spoke on behalf of me, and the judge didn't ask if I wanted to say anything or if I had any questions. It's not 'til afterwards that the lawyer tells me what happened and where to

go. It's very quick. It's also not clear what the reports are that they ask for."

"Again, you just feel like a spectator. Your situation is being discussed by everyone else."

For the small percentage (19%) of whānau participants who did feel included, this came primarily from a sense of engagement in the process.

"Because I was asked, [the] Judge was interacting, and she was engaged, [and] came back to me for my response after the lawyers talked."

"I feel like we are included now. The last six months have been okay, before that it was just a process."

In response to the question of whether whānau participants understood why the Judge made a particular decision at the end of the court proceeding, 44% of whānau participants did not or did not really understand, while 33% were not sure or did not understand what would happen next as a result of the judge's decision.

OVERALL EXPERIENCES OF WHĀNAU WITH THE FAMILY COURT

To the question of whether whānau participants had an overall good experience in the Family Court, most whānau participants (79.5%) reported that they either did "not have a good experience" or did "not really have a good experience".

Furthermore, when asked what aspects they liked and disliked about the Family Court process, most whānau participants (72%) stated that there was nothing they liked about the process. Whānau were forthright about the things they disliked:

"The lengthy time. The whānau unfriendly environment. It's really unfriendly to families, despite the name. We need conferences where everyone comes together and gets to speak. You hope like crazy that you get a good judge, some have no idea what whānau means – they have a singular view. The Family Court doesn't look at how it can build a future for the family to avoid another

generation of this. They have a real Pākehā view of looking at things – a white way."

"Yeah, it's extremely stressful actually. They are discussing your life and your children and orders that are going to be put in place and decisions that are going to be put in place. You've been put in a position in court where you feel you have no say, you have no power to the outcome. It can be demoralising cause it's based on the opinions of the case worker, their bias, their affidavits. The judge didn't acknowledge any of the information I provided in my affidavit – it felt like, 'let's just get this done'."

"It is [a] real English, kind of Anglo-Saxon environment, call the judge 'Ma'am'. The way that things are talked about is quite cold...the whānau just weren't sure what to do. The lawyers were also trying to move everyone away from each other and we were just trying to say hello – there was no room to even say hello. It's obviously not something that they are used to. It was really quite scary – it was a new experience for us. We are resourceful and intelligent people; if we find it like that how do our whānau find it?"

While the overall response from whānau participants regarding their experience in the Family Court was negative, there were instances where the judge's approach had a positive impact.

"I liked that the judge didn't give up on me."

I think just having the judge ask if there was something I wanted to say so when I said that I didn't agree with some of the things in the FGC and other things, I was encouraged to speak and do an affidavit."

SUMMARY

Whānau experiences in the Family Court

A wide range of problems with Family Court processes and the approach and culture within the Court room have led to overwhelmingly negative experiences for whānau.

Administrative and bureaucratic errors around hearing dates, lack of communication around what to expect in Family Court proceedings, and minimal or no information regarding the roles of the key participants in the Family Court process is resulting in whānau members showing up to Court feeling uninformed, alienated and with low levels of confidence. These findings are consistent with earlier research that found the court disregarded the “competing day-to-day demands on whānau”, which made scheduling of appointments and pre-hearing requirements particularly challenging (Boulton et al., 2018).

Once in the Family Court, these feelings are exacerbated. Whānau participants felt side-lined by judges, lawyers and Oranga Tamariki workers. For many, the lack of understanding and the alienation within what was described as a “scary” and “Pākehā” process meant that there was no point at which they felt able to participate, or have their views heard. For those few that did have an opportunity to be heard during the hearing, it was predominantly by invitation from the judge.

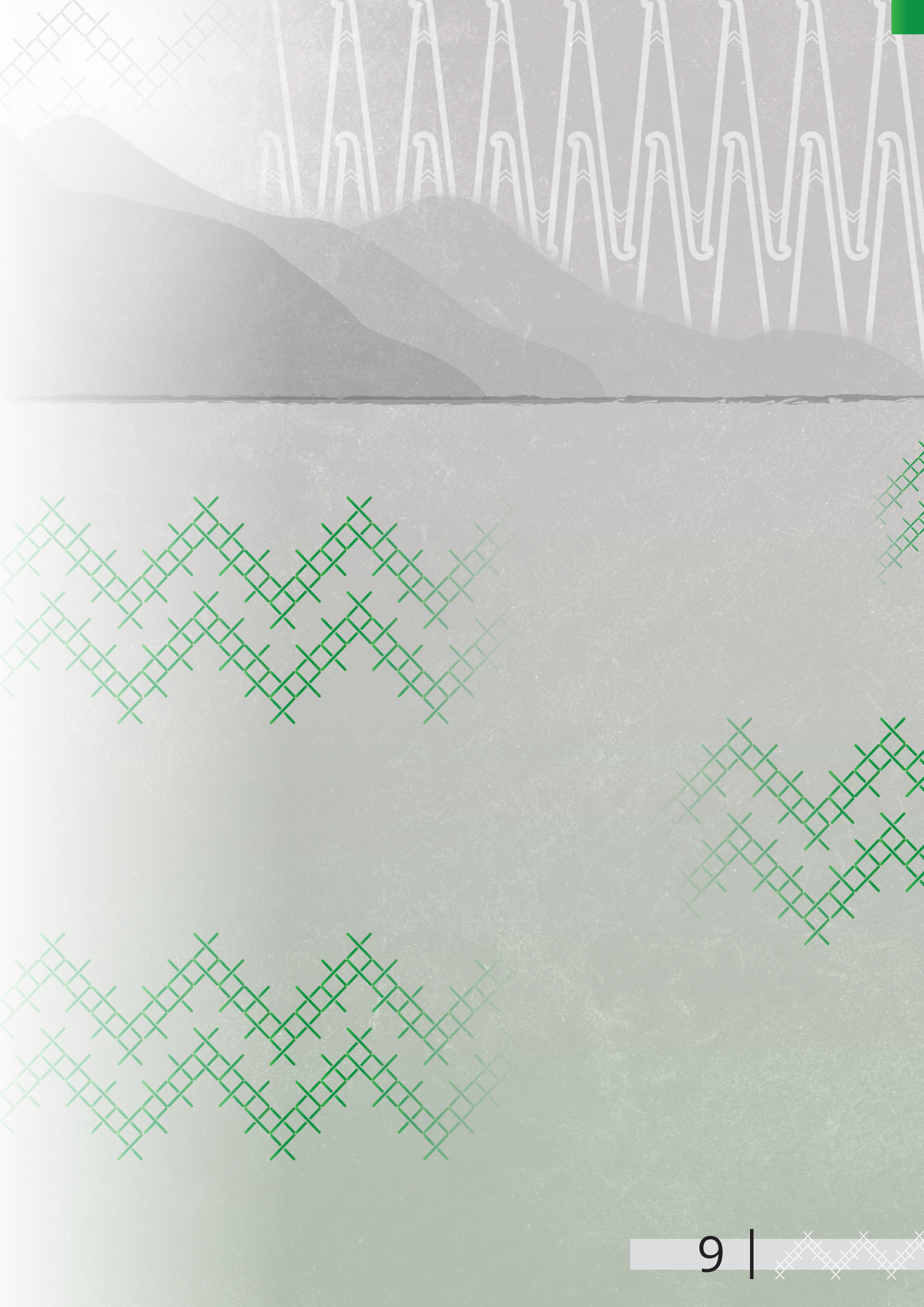
The idea of whānau as a network of people significant to the tamariki/rangatahi in question that extends beyond the main, or legal, caregivers is also seemingly misunderstood, as evidenced by the exclusion that was felt by many whānau members. In court, whānau participants reported feeling unwelcome, in particular where large whānau groups wanted to be present.

Whānau participants felt that the legal jargon and complex language used alienated them further, preventing them from understanding what was going on and being included in the proceedings. Process aspects, such as the short time in court, adjourned sessions, and inconsistent decisions between judges, further impacted negatively on whānau experiences, with many whānau participants feeling that they did not trust the Family Court system to uphold the best interests of their whānau.

As one participant said:

“It feels like you are coming into a place that’s unfamiliar, lots of twists and turns and on the front door it says, ‘Family Court’. Giving it a Māori name won’t change it. Even in a dysfunctional family you have an idea of how it works, but I don’t think the Family Court allows... things to happen. You still feel apprehensive about the court and there’s nothing about the Family Court that changes that – it’s not conducive to open conversation.”

Whether the focus is on the wider context of the legitimacy of the court system or the more grounded hope of achieving change, Māori experience of judicial culture and empathy is important. While some whānau believe that judges have a responsibility to ensure that whānau understand what is happening in Court, others feel that judges are dismissive and disrespectful.



NON-MĀORI PARTICIPANTS

SNAPSHOT OF NON-MĀORI PARTICIPANT PROFILES

- 75% attended Family Court as parents
- 12.5% attended as grandparents
- 12.5% attended as extended family
- Most participants (87%) had been involved with the Family Court and Oranga Tamariki between 2010–2019
- 58% of participants had been to the Family Court between 1–6 times, and 42% had been between 7–11 times.
- Participants had attended Family Court in Christchurch, Tauranga, Whanganui and South Auckland.

BEFORE ATTENDING THE FAMILY COURT

NOTIFICATION OF FAMILY COURT PROCEEDINGS

All participants received notices about the court hearing, and all believed it was essential for families to be notified of court hearings.

EXPLANATION OF FAMILY COURT ROLES AND PROCESSES

Participants were asked whether they knew, or had been told, about the Family Court processes, and the roles of the key people in the court.

Many participants (63%) were given no explanation about Family Court processes, though a small number (37%) received an explanation from their lawyer.

In many cases (50%) no one explained who was likely to be in the Family Court, nor what their roles were. 50% of the respondents received an explanation from their lawyer.

87%
did not know
the role of the
Oranga Tamariki lawyer

87%
did not know
the role of the
Court Registrar

62%
did not know
the role of the
Oranga Tamariki
Social Worker

50%
did not know
the role of the
Lawyer for the Child

38%
did not know
the role of
their own lawyer

25%
did not know
the role of
the Judge

CONFIDENCE WHEN ATTENDING THE FAMILY COURT

All the participants reported that they did not feel confident attending the Family Court. This lack of confidence stemmed from similar issues faced by whānau Māori research participants – not understanding the processes or roles, confusion about legal language used, and exclusion in the preparation for attendance at Family Court.

"It was a bit intimidating. I was a bit shocked and that. I was sort of like numb because you don't know what would happen."

"We were so broken and destroyed by then. It would have helped if things had been explained, what's going to happen and what's going on... We just couldn't work anything out."

IN THE FAMILY COURT

UNDERSTANDING IN COURT

When asked whether they understood what was happening during the Family Court session, none of the participants fully understood, with most participants (75%) reporting not understanding what was going on or understanding very little (25%).

"It was all new to me, it was all very confusing."

"The first time you go to court the judge could explain, especially to the people who are not educated in the Family Court, what the specifics of each person's role is and what you can do if you have any complaints."

COMMUNICATING WITH THE FAMILY COURT JUDGE

Half of the participants (50%) said that they had wanted to talk to the judge during Court but did not feel like they could ask the judge for an explanation of anything.

"I was quickly shown I wasn't to do that. It got me into a bit of trouble. My lawyer told me to remain silent and her do the talking. I was told to stand down by the judge or I would be removed from the courtroom."

"Sort of like the environment of you're there to do as you're told. Almost be an onlooker and not a participant. We thought we weren't able to question anything. You're so out of your league that you think if I ask anything I look like a fool."

DECISION-MAKING IN THE FAMILY COURT

None of the participants reported feeling included in the decision-making process in the Family Court.

"I felt like I had no input, even though I had a judge there. The judge already made his decision and that is what Oranga Tamariki wanted."

"We weren't given a fair go, weren't given an opportunity to speak."

"It's very stilted, it's very Pakeha. It certainly puts people in their places, in their hierarchy. If you're at the bottom you can't say anything, it's very intimidating."

Furthermore, 85% of participants did not or did not really understand why the judge made a particular decision at the end of the court proceedings, and only 15% understood what would happen as a result of that decision.

OVERALL EXPERIENCES WITH THE FAMILY COURT

When asked what aspects they liked and disliked about the Family Court process, most participants (63%) stated that there was nothing that they liked about the process. For those that did like something, it was around the idea of the Family Court having the children's best interests at heart.

"I do like my children being the centre of it all, I just don't like how they went about it, misjudged me, misheard me, and didn't put my children's needs for being kept together with family first."

"I believe in a sense that they acted in the best interest of my three grandchildren, but I'm still doubtful about that as I left the Family Court confused."

To the question of whether 'overall' participants had a good experience in the Family Court, 87% of participants reported that they did not have a good experience or did 'not really' have a good experience (13%).

"...There's too much false information and the judge seems to believe it. They don't listen to parents, we're not heard."

"It's a family decision – ultimately a family before a court's decision. [They should] hear the parents, the judge hears the parent's voices and concerns, rather than through a lawyer."

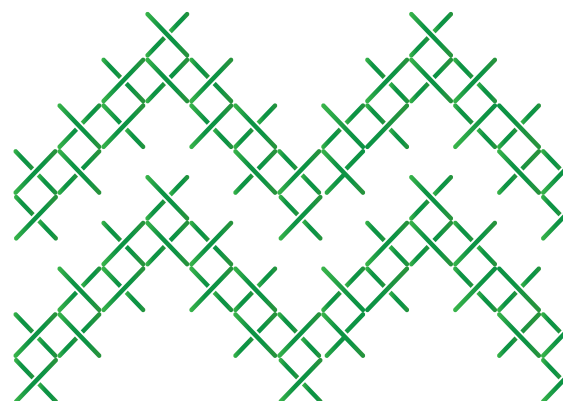
SUMMARY

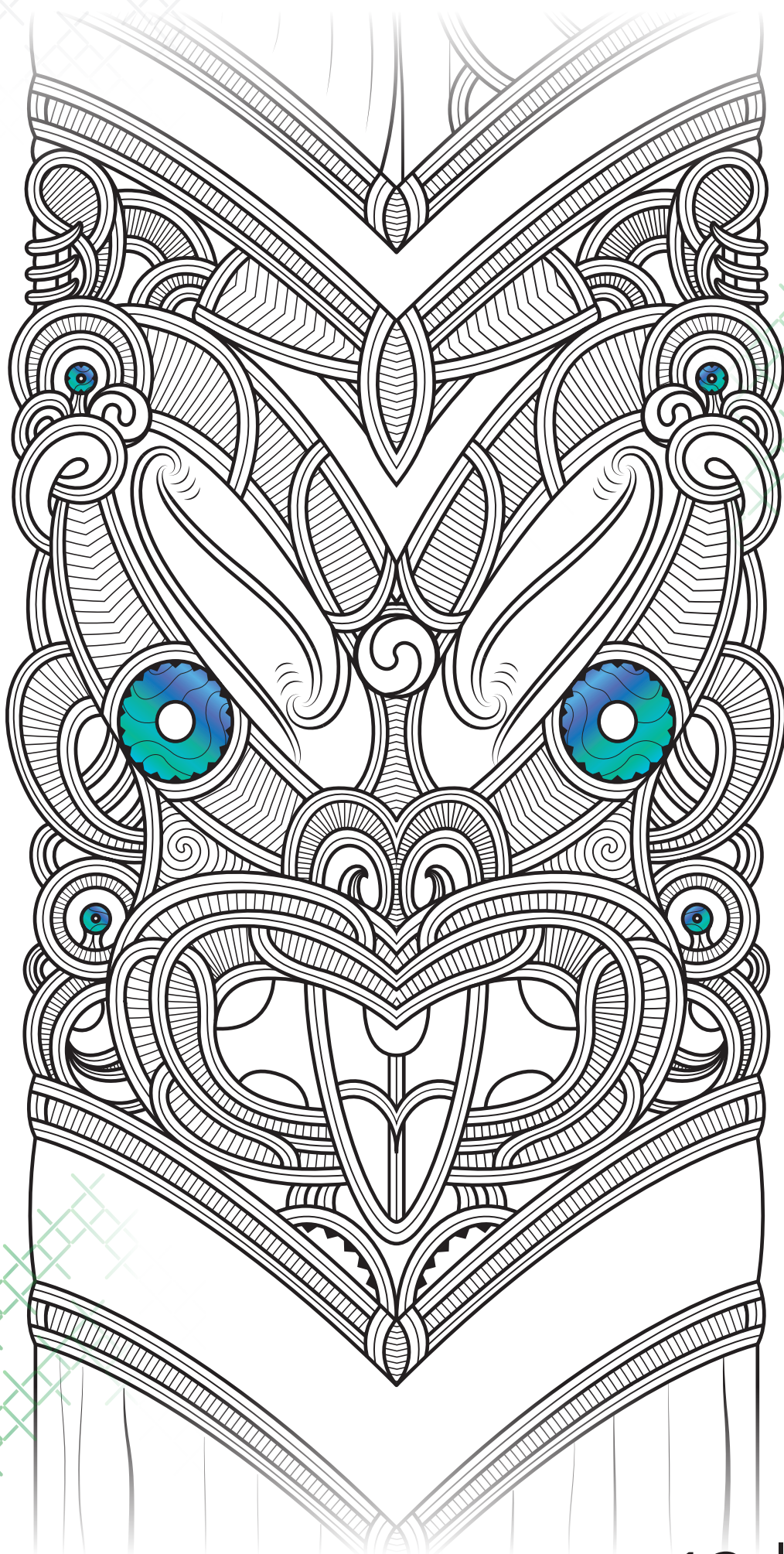
Non-Māori experiences in the Family Court

As with the whānau Māori participants, the non-Māori participants raised a wide range of issues with Family Court processes that led to their overwhelming negative experiences with the Family Court.

Feeling uninformed, intimidated and with little knowledge of the Family Court processes and roles resulted in participants having no confidence throughout their Family Court experience. Hierarchical structures and lack of empathy in the court from key figures such as the judge also meant that participants felt unable to ask for help or seek clarification.

The feeling of not being heard and having no agency was reiterated throughout these interviews, leaving the participants feeling alienated and powerless.





OPPORTUNITIES FOR CHANGE

Whānau participants identified a range of ways that the Family Court can be more accessible, more inclusive, and – most importantly – more aligned to Māori worldviews and expectations, to provide better outcomes in the care and protection of Māori children and young persons.

WHĀNAU-CENTRED, TIKANGA MĀORI

"It needs to be whānau-led and whānau-centred. It needs the Family Court and the judges to be more culturally educated, educated in Whānau Ora. Whānau Ora works – if it works for me it can work for others ... The court needs to give whānau the opportunity to makes things work, allow the services to come together. I believe if the courts did that and changed then you would find that you would get a better outcome for the whānau. Finding out what would work for the whānau, finding out about being Māori, dreams, aspirations ... finding the right supports to tautoko the whānau, emotionally, spiritually whatever."

"[The Court] should be more comfortable going in. An example is going to the Māori courts, you can give your pepeha and the judges get to know you better. If you're Māori and you would be more comfortable then that would have made a big difference, having the same setting as the Māori courts – it doesn't have to be a marae."

"I just felt that [the Court] was very cold. I just felt that the āhua and wairua was wrong. There was no aroha. There was no nothing. It was a waste of time. There was no hope. That's what they gave us the Court, Oranga Tamariki, no hope."

"I think the judge could at least acknowledge us. 'Kia ora whānau, who have we got in the room?' It's like whakawhanaungatanga to find some sort of connection. You have a Pākehā judge, lawyer, psychologist all talking to Māori about their babies. All of them don't have, don't understand us because they're thinking from a legal law point of view and we are thinking from a more te ao Māori point of view. We are thinking more about our tamariki and is this court case and everything that is going before the judge going to rip the whānau apart?"

JUDICIAL CULTURE AND EMPATHY

"It's their way or the highway. You have to conform to all the processes. I wasn't included in the process. The Family Court [Judge] talked to everyone but me."

"I think they should tell us the truth about all the processes. I think the Family Court should deal with things in a realistic way and holding Oranga Tamariki accountable for what they haven't done. The judge should be present, aware and understand, they should hold those who have power accountable. You need Māori judges but not ones that come with an ego – we don't need judges who sit there and it's all about them. You have to have understanding and empathy."

"Just speaking normal. They [judges, lawyers, Oranga Tamariki] speak in sections and you don't know what they mean. They know that you don't know what they are talking about, but they still don't explain what they mean. The judges could explain or give some time to learn."

"I guess just ask if we would like to say something. Maybe don't make it seem like they are rushing your case – it's like you're a number. Maybe shorter reviews. Also, I don't like it when the judge and the lawyers are making jokes, they're laughing and making comments like 'Lawyer for child has been on holiday overseas'. It's like a joke – I'm not laughing, I'm trying to hold back my tears. I don't want to hear that."

"I put my hand up to say something and the judge said, 'can we hurry up with this, I haven't had lunch'. I had my Pop with me he said, 'excuse me your Honour'. The judge just said that the 'next court date is, court's adjourned'. He then got up and walked out. I just started crying. He just ignored us and took no notice whatsoever."

"Attitude. Professionalism. Because you know you go to court thinking a judge is fair, just and right but when you go to a judge that does that [says he hasn't had his lunch and leaves]. It was disgraceful. It's wrong for a judge to do that. [It] is disgraceful and disrespectful."

CONSISTENCY

"After all these years in the court it seems to be a tiny bit better. Not a lot. I won't say it has been a wonderful experience. When you get different judges for each hearing, they all have different opinions. It would be nice if the judges had some consistency. Each time we've had a different judge with a different opinion, with no consistency. The judges can be totally opposite. There's no consistency in the decision making."

"Stick to the deadlines, all parties to adhere to the deadlines. I think the judge should make consistent decisions. All the judge is showing is that Oranga Tamariki doesn't have to abide by the rules."

"More consistency. The whānau need to be more at the top of the decision with the Family Court. If a judge gets a case, then that judge should follow the case through to the end so that there is continuity in the case."

INCLUSION AND PARTICIPATION

"There needs to be more inclusion by the judge of the whānau – 'would you like to say anything', acknowledge the things raised by the whānau, [we] need to feel like more than a spectator."

"The way that it is set up is intimidating. I think better time management. A less invasive environment where you feel like you can have a say and you're allowed to speak up for what you believe in. To be a part of any proceedings towards your children that isn't just the lawyers talking. I would have loved to have been part of the decision making."

"You should be able to feel that you can express yourself openly to the judge. So the whānau can feel that. He should be aware. ... It starts with the judge – he's got to build that relationship with the whānau who walk into the courtroom. Let the whānau feel like they have a say."

"I think there should either be more information about what to expect or the family court process should be softened. Time for introductions and time for someone to explain what's going to happen and how whānau can contribute, a time to ask questions during or after. I don't think it's an inclusive process that allows whānau to participate. You're like bloody voyeur and they are talking about your moko and making decisions about your moko. They are talking about laws that we don't understand."

KNOWLEDGE AND UNDERSTANDING

"It's quite a sterile environment, the physical environment. The rules of the game, 'speak when you're spoken to', the framework, the way you talk – 'May it please the Court'. The language. If they would just talk normally, [in] layman's terms. They use Latin phrases 'vis a vis'. We were nervous as. We didn't know what they were going to talk about and what the decision would be that day."

"It would be good if they have someone at court helping to explain things. It should be okay to explain everything. Sometimes they talk big words and families don't understand."

"They should simplify the paperwork, especially the ones they send out. They put all their flash words in, but no one knows what they mean."

COMMUNITY CONNECTION

"The first time you see a judge is in the courtroom. I don't understand their role. You don't really see a judge. It would be good if they were more visible in the community."

"It would be good if they were part of the community. Because in our case he [the judge] interviewed our eldest son which we were only aware of on the day ... It would have been ideal if his mum or his dad were present. His first language is te reo and to be told that he won't transition back to his parents is not ideal to hear from a judge."

TIMELINESS

"Just how long everything takes. You wait months for a 15-minute block just to be directed to wait another few months for another 15-minute block and nothing happens."

"I don't think I particularly enjoyed any of it [Court]. It's quite drawn out, prolonged and confusing. I don't think any of it is in the interests of the children."

"Just more clarification on things and if things could actually be worked out a lot quicker. I don't think it's necessary for things to be drawn out like they are. You wait months for 15 minutes and everyone is sitting in limbo."

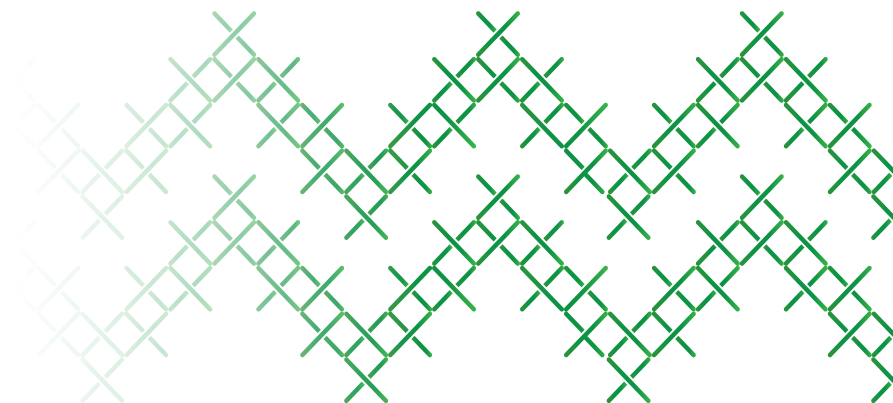


SUMMARY

Opportunities for change

The lived experiences of these whānau brings to light a range of ways that change needs to happen. Participants highlighted opportunities to tackle process and system issues, such as Court delays, inefficiencies and inconsistencies, but they also spoke about the more general culture of the Family Court, where whānau being heard, seen and included in the process was of utmost importance. Values of empathy and kindness within the Court sat alongside values of mana from within Te Ao Māori, where tikanga was seen as a way to create a space for whānau to sit at the centre of the process, rather than on the edges.

Their vision for change included having judges be part of the community in which the participants live, as knowledge about and connection to the community is an important way to contextualise whānau experiences. Participants also identified the importance of being supported by the Family Court to understand processes and systems, which again provides insight into ways to make the Court a place of inclusion, and a place where whānau could feel safe.



POSSIBILITIES

Family Court Proceedings on Saturdays and/or on Marae

In recent years, members of the Family Court judiciary have raised the possibility of holding care and protection proceedings on a marae. However, they have also noted the barriers for the Court in delivering justice (therapeutic or otherwise) in a different way. The barriers include the number of judges available to carry out the work, the number of courtrooms available and staffing (Ministry of Justice) issues.

Considering the comments made by the judiciary, two possible changes to Family Court care and protection proceedings were proposed to whānau as part of the survey process:

1. Moving care and protection proceedings to marae;
2. Holding care and protection proceedings once a month on a Saturday at the Family Court.

Saturday-based care and protection proceedings were described to participants as an opportunity to bring together whānau (including extended whānau in accordance with tikanga Māori), Oranga Tamariki, lawyers, social service providers supporting whānau in the community and the judge. Holding proceedings on Saturdays was seen as a practical option that would allow greater attendance by whānau and address the barriers identified by the judiciary.

Participants would be seated around a table for the proceedings, with 30 minutes allocated for each whānau. The purpose is to provide the time necessary to assess where matters are at and decide the next steps in the proceedings, with all relevant whānau present. This approach would ensure that whānau can talk to the judge, with the judge ensuring the accountability of all parties, not just whānau.

FAMILY COURT PROCEEDINGS ON MARAE

There was a mixed response to the idea of holding Family Court care and protection proceedings on marae.

Over half (59%) of participants thought that holding Oranga Tamariki court proceedings on a marae would

be a good or positive thing. Some thought it might put whānau more at ease and/or that they themselves would feel safer.

"I think that the Family Court would then have to adhere to the tikanga of the marae, it would chip away at their power. I think the process has to be Māori-based. It can be at a marae, but if the attitude is still the same then nothing will change – that's not it. Change needs to be from the ground up. It's a wrap around thing. It can't be the single focus of taking the whānau out, then nothing."

"It would be good. For starters you'd always have the good wairua there, you'd feel more comfortable. It would be a killer if the judge didn't give our baby back. I think I would still feel better on a marae, anything's better than a court."

"I know about some of the Iwi being involved in partnerships. If I knew that I had my Iwi involved and I could go back to the marae then I would be quite pleased. I think it would show stronger support, that would be brilliant. I think it's about identifying where the child belongs and trying to come up with a good plan to wrap around the tamariki, even if they don't belong to a marae. Maybe go to the marae when it's a whānau placement."

Thirty-eight per cent of whānau thought that holding care and protection proceedings on a marae would not be a good thing. They felt that it would make no difference to the outcomes for whānau.

"What for? It's not about the proceedings being held on the marae – history tells us that the process, practice and the outcome doesn't change. The only thing that changes is the geographical location. What for? It's just another way to diminish our whakapapa and connection to that forum. Why would you take a care and protection to a marae, but to talk about the disconnection, uplift, dysfunction, belittle whakapapa. It's just another intimidation tool."

"I don't really think it would matter where it is. Just because when you go to the courthouse, that's where you automatically think. If you go to the marae, it would be all the same people, just a different place. I don't think it would matter."

FAMILY COURT PROCEEDINGS ON SATURDAYS

There was a high level of support for having care and protection proceedings on a Saturday, with less emphasis on a formal process, and an enhanced opportunity for discussion and increased ability for whānau to attend. Almost all participants (97%) thought that this would be a good thing.

"That would be brilliant if that was to happen. That would help whānau because if there are issues then the whānau could go into court with their whānau around them, instead of having to wait until the court has time. The time in court is too short, it would help a lot. As long as they can involve all community service organisations, whānau, friends and all those who support whānau."

"That actually sounds like a good idea because it takes OT out of their comfort zone. A lot of people work during the week, so Saturday is a good day."

"That would be so cool. I've done all the plan[s] for the last year and a half to two years, they haven't done anything. ...No matter how hard it is, the whānau have to jimmy their world around. It would be fair for the court to work on Saturday."

TOWARDS TRANSFORMATIONAL CHANGE

It is well understood that the trajectory for many tamariki Māori who come to the attention of Oranga Tamariki begins in the Family Court system and ends in the criminal justice system (Hāpaitia te Oranga Tāngata, 2019). What is not so well understood is how we enact change in the Family Court in order to stem this tide.

At an intellectual level, the obligation of the Family Court to uphold the principles of Te Tiriti o Waitangi is also understood. But once again, what is not so well understood is how to give practical effect to this.

The action points arising from this research acknowledge the experiences of whānau Māori while giving increased recognition to the Tiriti partnership. Whānau, hapū and iwi have a significant role to play in stemming the tide of tamariki Māori moving from the Family Court to prison.

The change required to transform the lives of tamariki Māori, whānau, hapū and iwi is largely dependent on the courage and commitment of those with the power to effect change in the system. In this instance, that is the Family Court and the Government.

Transformational change demands more than rhetoric. It demands a commitment that reflects true Tiriti partnership. It also demands courage; courage such as that shown by the Government and Iwi during the Covid-19 pandemic. That is, the courage to make the decisions and take the steps required to ensure the safety of their people.

This report proposes three options for change. While the options are independent, the first two can be implemented together. All, however, require respect, commitment and courage at graduated levels.

1. JUDICIAL AND PROFESSIONAL BEHAVIOUR

Level one focuses on changing the behaviour of the judiciary and professionals involved in the justice system. This option does not require legislative change.

Every court date is an opportunity to engage with whānau, hapu and iwi to support change. Whānau, hapu and iwi must be respected at all points of engagement, and culturally appropriate models of engagement must be understood and enacted by the judiciary. It must be agreed that the attainment of a sound knowledge of tikanga and te reo Māori is non-negotiable for professionals working in the Family Court. Furthermore, respecting mana, whakapapa and whanaungatanga, together with acts of kindness and inclusion towards whānau, are behaviours that should be a common standard for all that work in the Family Court.

2. FAMILY COURT SITTINGS ON SATURDAY

Level two is to hold Family Court care and protection proceedings on a Saturday. This is a practical option, and again does not require legislative change. It does, however, require the commitment and co-operation of the Family Court, the Ministry of Justice and the community.

Having Family Court sessions on a Saturday has the potential to be a simple yet effective way to meet the needs whānau expressed in the survey. The acknowledged barriers that are often raised by members of the judiciary, including time constraints, capacity constraints and whānau availability, would also be alleviated by the option to hold court sittings on a Saturday.

3. TE POARI A NGĀ TAMARIKI, NGĀ TAIOHI ME TE WHĀNAU (CHILDREN, YOUNG PERSONS AND THEIR FAMILIES BOARD)

Level three embraces the partnership envisaged by Te Tiriti. It also requires the greatest level of courage and commitment by Government, Iwi and the community.

We propose the establishment of the Children, Young Persons and Their Families Board. This Board will facilitate care and protection proceedings in place of the Family Court. It will be responsible for applying the law and making the decisions necessary for tamariki who come to the attention of Oranga Tamariki and for whom legal orders are sought. To ensure the Board centres Te Tiriti and tikanga, at least half of the Board members will be Māori.

There is precedent around the world for decision-making in care and protection (child removal) matters to be carried out by a Board. However, the specific provision for the inclusion of indigenous people in the decision-making when legal orders are sought by the state is without precedent. This is an approach that would lend itself to Tiriti partnership, while over time freeing up the Family Court to carry out its remaining core responsibilities.

While there has long been justification for meaningful change in the Family Court, there has been a reluctance to engage beyond superficial tinkering. There has also been a tendency, which must be resisted, to dismiss whānau experience due to the emotional nature of Family Court proceedings. The establishment of a Board will address:

- the issues raised by whānau;
- a real and practical commitment to Te Tiriti o Waitangi;
- ongoing significant operational challenges including delay in the Family Court;
- the adversarial nature of the Family Court;
- the belief of some whānau that the Family Court is the first step in the criminalisation of their tamariki;
- the opportunity to apply an inquisitorial and therapeutic process;

- an approach that sees the Board as part of the solution rather than continued disadvantage;
- the impending number of Family Court Judge retirements and their ongoing cost as judges with acting warrants;
- the considerable cost of appointing new Family Court Judges in their place and
- the lack of community confidence and accountability in the status quo.

Covid-19 has acted as something of a litmus test when considering the decisions made and the ability shown by iwi and the Government to protect people from harm. The establishment of a Board would be a continuation of the rangatiratanga shown at a time when the rest of the world continues to struggle.

That global struggle is intensified by the Black Lives Matter movement, which resonates for Māori, and continues to call for solutions on many fronts. The voices of whānau, the legacy of colonisation and disadvantage, the number of tamariki Māori in state care, together with a prognosis of poor outcomes, echoes that call in the Family Court.

CONCLUSION

This research provided much-needed visibility of the lived experiences of whānau in care and protection proceedings in the Family Court. It also sought to highlight the significant role that the Family Court plays in care and protection proceedings as the decision-maker placing tamariki/children in the care of the state.

This report opened with the two broad questions:

1. If the Family Court considered the link between the over-representation of Māori children and young people in state care and protection, and whānau experiences within the Family Court, what could it do differently?
2. What does the commitment to the principles of Te Tiriti o Waitangi look like in the Family Court?

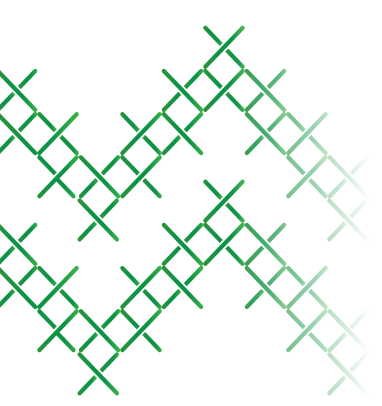
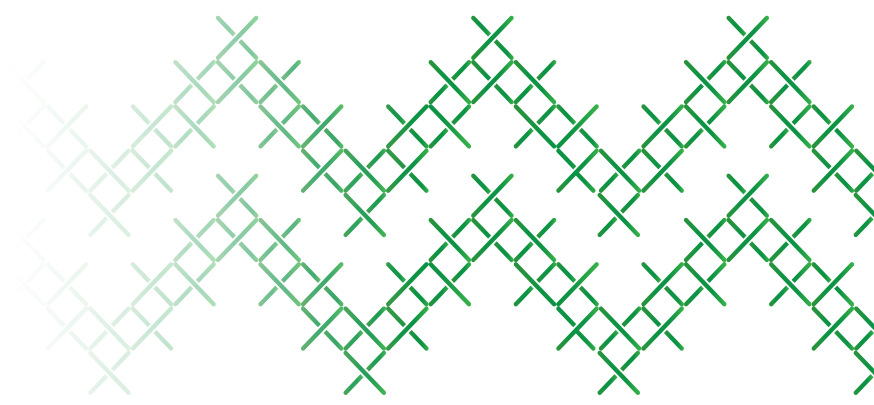
Amid the current range of reviews and reports seeking solutions to address the dire state of care and protection in Aotearoa for tamariki Māori, the lived experience of whānau cannot be ignored. Whānau have declared their ongoing issues within the Family Court, and the solutions lie in confronting these issues in meaningful and direct ways.

The 'low-hanging fruit' solutions involve judicial leadership, implementing a culture of open communication, care and respect, coupled with procedural-based administrative improvements that enhance communication on key issues. They also require a commitment to engage in ongoing tikanga and te reo Māori education to understand fundamental care and protection concepts statutorily prescribed as relevant to care and protection decisions for tamariki Māori.

Saturday care and protection proceeding sittings are a commitment to accommodating the needs of those who come before the Family Court.

The solution that embraces the partnership envisaged by Te Tiriti is also the one that requires the greatest level of courage and commitment by Government, Iwi, and the community. Care and protection proceedings are moved to a Children, Young Persons and their Families Board, with at least 50% Māori representation. The Board would be responsible for applying the law and making the decisions necessary for tamariki who come to the attention of Oranga Tamariki and for whom legal orders are sought.

The collective lesson to pause, reflect and re-imagine that has arisen from the Covid-19 pandemic as well as the 'Black Lives Matter' movement must be paid heed in Family Court reform. Whānau have told us, in their own words, how to address this urgent challenge. It is now up to us to listen.



APPENDIX 1

Research Design and Methods

BACKGROUND

Te Taniwha i Te Ao Ture ā-Whānau – Whānau Experiences of Care and Protection in the Family Court is part of a wider research focus on Māori and the care and protection system undertaken by Tania Williams Blyth – a community researcher and practicing family lawyer – in conjunction with Whakauae Research for Māori Health and Development.

The first research project, *Care and Protection of our Māori Children, our Future: A Whānau Perspective*, was carried out in 2014–2015. The qualitative study utilised in-depth interviews with Māori parents and grandparents about state intervention in the care of their children and grandchildren. The results of that project were published in 2018 (Boulton, A., Potaka-Osborne, G., Cvitanovic, L., & Williams Blyth, T. (2018). E tipu E Rea: The care and protection of indigenous (Māori) children. *New Zealand Law Journal*, 3) and informed the development of a second paper (Boulton, A. (2018). Decolonising Ethics: Considerations of Power, Politics and Privilege in Aotearoa/New Zealand. *Southern African Journal of Social Work and Social Development*. Volume 30, Number 1. DOI.org/10.25159/2415-5829/3825. <https://upjournals.co.za/index.php/SWPR>) The results from the research also formed the basis of a legal education programme that was developed and delivered initially to Waikato Tainui, and then to Māori communities throughout the country.

More recently, the research has informed a 2019 publication addressing the care and protection of tamariki and the role of the Family Court system (Williams, T., Ruru, J., Irwin-Easthope, H., Quince, K., & Gifford, H. (2019). Care and protection of tamariki Māori in the family court system. *Te Arotahi*, 1 (May 2019)).

This research project, with its focus on whānau experiences of care and protection proceedings in the Family Court, was initiated by significant change around the legislative reform of the Oranga Tamariki Act in July 2019. These changes reinforced the need to understand the wider systemic change required throughout the care and protection system.

RESEARCH DESIGN AND METHODS

KAUPAPA MĀORI

This research project is located within a Kaupapa Māori inquiry paradigm – it is Māori-driven; focuses on issues of concern to Māori; draws on methods and practices consistent with tikanga, Māori knowledge and contemporary realities; privileges Māori research aspirations; and looks to build Māori research capacity (Gifford, Cvitanovic, Boulton & Batten, 2017).

ETHICS

A formal ethics review was approved by the New Zealand Ethics Committee Te Roopu Rapu I te Tika (#2019_43).

STUDY DESIGN

The project drew on a simple mixed methods approach to examine the experiences of whānau (Patton, 2015). Data collection was conducted using a one-off online questionnaire. The tool included both closed and open-ended questions in order to elicit quantitative and qualitative data; that is, both statistics and stories (Patton, 2015). While the statistical information presented here provides a broad picture of the experiences of whānau participants, the stories of participants themselves adds a more detailed and in-depth understanding of the whānau experience.

The questionnaire⁴ was designed to address participants' experiences in the context of three overarching questions:

- What do you like about the way the Family Court operates?
- What don't you like about the way the Family Court operates?
- What could the Family Court do to improve whānau engagement with the court?

In asking "What could the Family Court do to improve whānau engagement with the Court?", the following subset of questions were asked:

- What Family Court processes work well for whānau and why?
- What Family Court processes do not work well for whānau and why?
- What commonalities and differences are there in the experiences of different whānau with Family Court processes?

DATA COLLECTION

Whānau who are currently, or have recently been, involved with Oranga Tamariki and the Family Court and met selection criteria were invited to participate in this study.

Whānau were recruited via recruitment posters⁵ displayed in the public waiting areas and office spaces of Māori and Iwi social services agencies around New Zealand.⁶ Agencies that the lead researcher had previously delivered legal training workshops to were selected.

Interested whānau were provided with information by their social service agency and the lead researcher, who discussed the study with whānau and gave them a written information sheet. Whānau were then offered the opportunity to take part in the research.

Forty-seven whānau volunteered to participate in the study. Thirty-nine whānau were Māori. Three of those whānau had not been involved in care and protection Court proceedings, which meant that they were ineligible to participate. The remaining eight whānau were Pākehā or identified as European. A decision was made to allow their participation with the results being reported separately.

The 36 whānau who had been involved in care and protection proceedings met with the lead researcher at the office of their social services provider, where the survey was self-administered. The lead researcher was present in order to undertake the informed consent process, help answer any questions about the survey or the research process and to enter the data as directed by whānau.

In addition to the survey, the other key data source used to inform the analysis was the lead researcher's field notes, which were compiled following interaction

with each participant. Participants were verbally informed by the researcher of her intention to compile field notes (Patton, 2015), and that these field notes would consist of the researcher's anonymised impressions about that interaction. Participants were further advised that the field notes may be used as an additional source of study data.

A brief literature search and review was carried out in the later phases of the research to better contextualise the findings. The literature review focused on scanning the existing literature around Māori and care and protection in the Family Court. Database⁷ searching used terms including Māori and the Family Court, Māori and care and protection, Māori and the justice system.

DATA ANALYSIS

Simple statistical analysis was used to interpret the quantitative data generated by the whānau survey participants (n=44). For clarity, the Māori data (n=36) was analysed separate to the non-Māori data (n=8).

Thematic analysis was used for the qualitative component of the data, using a mahi ā rūpū approach. Mahi ā rūpū is a team, strengths-based approach using thematic analytic techniques (Boulton and Gifford, 2014). This method is based on indigenous models of working together as a group, which combines critical reflection and subject knowledge of the research team.

LIMITATIONS

The limitation of this study comes from the relatively small sample of participants, and the short timeframe in which this research was carried out. Given more time and resources, it would be advantageous to include a larger number of participants, and across further geographical areas of New Zealand.

⁴ See Appendix 3 for full questionnaire.

⁵ See Appendix 4 for recruitment poster.

⁶ These 14 agencies are located in Christchurch, Dunedin, Wellington, New Plymouth, Whanganui, Hastings, Tokoroa, Rotorua, Whakatane, Tauranga, South Auckland, Auckland central, Kaikohe, and Kaitiaia.

⁷ Databases include Lexis Advance; Index NZ; JSTOR; AGIS Plus; Social Services Abstracts; Social Science ProQuest; SAGE Journals; Informit; Google Scholar; Web of Science.

APPENDIX 2

Māori and the New Zealand Family Court – Literature Review

Puao Te-Ata-Tu – The report of the Ministerial Advisory Committee on a Māori perspective for the Department of Social Welfare (1988) was received as a ground-breaking review that evidenced the systemic disadvantage experienced by Māori (Hollis English, 2012). The report opens with a range of harrowing statistics regarding the overrepresentation of Māori in unemployment, mortality rates, low educational achievement, low income levels, and the New Zealand justice system. The subsequent conclusions and recommendations drawn up by the Committee were the result of extensive consultation across Aotearoa, resulting in 1,424 verbal submissions and 267 written submissions (Otene, 2019). In particular, the recommendations around eliminating cultural racism and developing “strategies and initiatives which harness the potential of all of its people, and especially Māori people, to advance” (p.9), provided hope and guidance for a better future for Māori.

The earlier 1987 report *The Māori and the Criminal Justice System: A New Perspective He Whaipaanga Hou* by Moana Jackson engaged with Māori to report on their experience of the justice system. Whaipaanga Hou was a response to the overrepresentation of young Māori within the criminal justice system, and like *Puao Te-Ata-Tu*, the issue of disparity, cultural bias and systemic dysfunction became an impetus for urgent change (Jackson, 1987).

While both reports have been considered seminal pieces of analysis for the past three decades, the reform advocated by both reports was never achieved. In a 2019 article examining the role of the Family Court to effect change through the amendments to the Oranga Tamariki Act 1989, Judge Sharyn Otene commented on *Puao Te-Ata-Tu*:

That the vision of the authors of those recommendations and the architects of the legislative response was not realised represents, now 32 years later, two maybe three generations of lost opportunity. It represents children now grown at distance from family, whānau, hapū and iwi and at the very bleakest end dependent, impoverished and criminalised. It renders those recommendations as relevant today as at their inception. (Otene, 2019, p.140)

Since the writing of *Puao Te-Ata-Tu*, little has changed for Māori. Reviewing the current experiences of Māori in the Family Court highlights the ways in which the system has missed opportunities for meaningful change.

Reviews and commentary on the New Zealand court system are unified in pointing to continued disparity and a systemic inability to respond appropriately to the needs of whānau Māori. Later reviews also highlight the necessity to embed tikanga and Te Ao Māori values and approaches in the courts. The lack of Te Ao Māori values shows that the New Zealand judicial system is still a long way off enacting the “true essence and kōrero of these reports [Puao-Te-Ata-Tu and He Whaipaanga] ... [which] must inform the reform process and be given appropriate recognition by all who work within the justice system.” (Hāpaitia te Oranga Tangata, 2019, p.9)

THIRTY YEARS ON: REVIEWING THE NEW ZEALAND COURT SYSTEM

In 2004, in response to ongoing issues within the court system, the New Zealand Law Commission set out to review the structure of the court system to see how the courts could operate more efficiently. Public submissions to the Law Commission review revealed a range of deeply entrenched systemic issues, and a lack of public confidence in the courts (Law Commission, 2004). The system was criticised for the absence of information about the court process, high legal costs, time delays and “people feeling as though they are not able to tell their story, to be understood or be responded to in a way which is meaningful to them” (Law Commission, 2004, p. 6). Furthermore, there was a perceived “lack of respect” from people working in the court system and the feeling that “courts too often exclude people rather than provide an environment in which they can comfortably and naturally seek redress or assistance” (Law Commission, 2004, p. 6).

Echoes of these findings were again present fifteen years later in a 2019 report on the New Zealand criminal justice system by the Te Uepū Hāpai i te Ora – Safe and Effective Justice Advisory Group. This review found that the system is “failing to help those who are harmed, failing to stop harm and reoffending, failing Māori, [...] failing to meet diverse needs, [is] confusing and alienating, and costly, especially in terms of the loss of human potential” (Te Uepū Hāpai i Te Ora – Safe and Effective Justice Advisory Group, 2019, p. 7).

The recurring theme of public distrust and dissatisfaction can be seen throughout the reviews and

is significant when looking at the place of the Family Court in the child protection system. The Family Court was set up as a place where – in contrast to other courts – ‘family’ would be at the centre (Williams et. al, 2019). Much of the commentary around the specialist nature of the Family Court lies in the court’s access to the whole gamut of family life and family hardships (Somerville, 2016; Doogue, 2018; Otene, 2016; Noonan et. al, 2019). As such, the role of the Family Court Judge has been described as having specific responsibilities to help solve social problems. This means that these judges “have a valuable contribution to make in breaking or disrupting the trajectory of disadvantage, and in restoring people’s lives” (Doogue, 2018, p. 3).

While the Family Court is charged with enacting governing legislation around child protection, it is required to do so within a “therapeutic” rather than adversarial approach (Beattie, 1978, cited in Williams et.al, 2019). While the Family Court thereby has a mandate to approach judicial resolution in a slightly different way to other courts, reviews and commentary make it clear that the Family Court is inextricably burdened by the systemic problems that affect the whole of the New Zealand judicial system (Doogue, 2018).

A 2012 review by the Ministry of Justice highlighted various issues within the court system, including court processes which were complex and slow, costly, and with “insufficient focus on children and vulnerable people” (Ministry of Justice, 2012, p. 4). Persistent problems were identified by a large number of people who “expressed serious concern at the way they experienced their treatment in the Family Court [leading] to the development of community groups who publicly question the soundness of Family Court decisions” (Noonan et. al., 2019, p.14). The 2017 report *All eyes on the Family Court*, which surveyed the experiences of women who have been involved with the Family Court, reiterates the community perception of the Court as a place where “the system is failing to keep them and their children safe” (The Backbone Collective, 2017, p. 3).

MĀORI IN THE COURT SYSTEM

The 2004 Law Commission report on the New Zealand court system also drew attention to the feedback from Māori around the lack of “cultural practices in the courts”, including “the ability of whānau to speak in court and support victims and defendants in culturally appropriate ways” (Law Commission, 2014, p. 7). Fifteen years later, Te Uepū Hāpai i Te Ora’s report on the criminal justice system reiterated the urgent need for change in a system that is “failing Māori” and is “racist, culturally blind and culturally biased” (Te Uepū Hāpai i Te Ora – Safe and Effective Justice Advisory Group, 2019, p. 7). Similarly, *Inaia Tonu Nei*, reporting on the 2019 Hui Māori, stated that:

It was clear from those who attended the Hui Māori that the justice system continues to hurt whānau. Whānau Māori are having to respond to the intergenerational effects of the racism, bias, abuse and colonisation that the justice system has created, enabled and continues to deliver almost 200 years since the signing of Te Tiriti o Waitangi. (Hāpaitia te Oranga Tāngata, 2019, p. 2)

Writing about Māori experiences of dispute resolution in the Family Court in 2003, the Law Commission asserted that “As tangata whenua and partner to the Treaty of Waitangi, Māori expect the justice system – including the Family Court and its processes – to recognise their values and practices” (Law Commission, 2003, p.160). However, fourteen years later the 2019 *Te Korowai Ture ā-Whānau* review of the 2014 family justice reforms listed ongoing issues for Māori in the Family Court. These issues included monocultural family justice services; widespread frustration and scepticism amongst Māori whānau, hapū and iwi, and kaupapa Māori organisations; family justice services that do not align with tikanga Māori or Māori views of whānau; lack of official requirement for the Family Court to build and maintain relationships with mana whenua; lack of engagement with kaupapa Māori services by Māori for Māori in family justice services; and lack of cultural education by Family Court Judges (Noonan et. al, p. 37).

LOOKING AHEAD: TE AO MĀORI IN THE FAMILY COURT

While reviews have evidenced the urgent need for change in regard to Māori and the justice system, they have also focused on solutions and aspirations for a justice system that “prevents harm, addresses its causes, and promotes healing and restoration among individuals and communities” (Te Uepū Hāpai i Te Ora - Safe and Effective Justice Advisory Group, 2019, p. 5). According to Te Uepū Hāpai i Te Ora, a system that works for Māori is one “by Māori for Māori” and based on an equal power governance model that shares decision making, resourcing and puts tikanga Māori and Te Ao Māori values “central to the operation of the justice system” (Te Uepū Hāpai i Te Ora - Safe and Effective Justice Advisory Group, 2019, p. 8).

The Family Court can play a central part in enacting meaningful systemic change by empowering people through “procedural fairness”, which includes treating all whānau with respect and seeking ways in which whānau can contribute in court and have their voice heard. This is a step toward an ideal where “all courts such as ours [District Court] would provide wrap-around services and shift from solely decision-making to include solution finding” (Doogue, 2018, pp. 20-23).

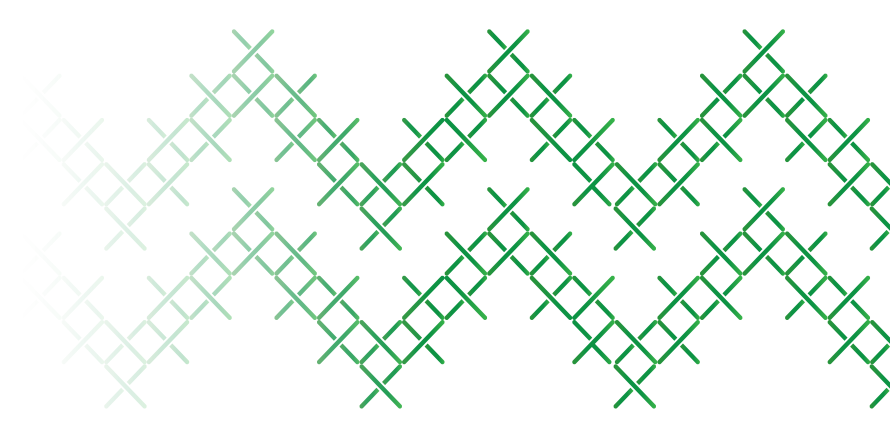
Like Te Uepū Hāpai i Te Ora (2019), *Te Korowai Ture ā-Whānau* calls for a Family Court reform that employs a new action plan and strategic framework to improve family justice services for Māori by including “specialist advisors to assist the Family Court on tikanga Māori, kaupapa Māori services and whānau centred approaches, access to mana-whenua and wider Māori community knowledge, and adequate funding for culturally appropriate FDR processes” (Noonan et. al, p. 38).

WHĀNAU VOICES, WHĀNAU EXPERIENCES

Not only must the Family Court understand and apply the legislation as it relates to children, young persons and their families, it must also respond to the evolving public needs. As the various reviews have shown, there have been movements to reform the court, its function, and its approaches. While seminal publications such as *Puao-Te-Ata-Tu* demonstrated an early inclusion of Māori experiences, these voices – and the accompanying recommendations – were, in many ways, outliers until close to twenty years later, when analyses of the New Zealand justice system reiterated their messages of Māori disadvantage and exclusion.

The justice system reviews of the twenty-first century have begun to highlight the exclusion, voicelessness and ongoing issues faced by Māori in the court system. Recent reviews have also focused on what it will take to turn the court system around to improve experiences and outcomes for Māori. There is consideration of what tikanga in court or inclusion of Māori in decision making around court systems might look like. However, as Judge Otene states, “there is a paucity of Family Court jurisprudence of depth and import on the Treaty both generally and relative to care and protection matters” (Otene, 2019, p. 141). Furthermore, while there is evidence from submissions to the various reviews, there is potential to extend the literature around ‘lived experiences’ of whānau Māori in the Family Court relating to care and protection matters.

While consideration of whānau in care and protection proceedings in the Family Court has begun (Williams et. al, 2019; Boulton et. al 2018), there is scope for new evidence to emerge in light of the recent reviews of New Zealand’s child protection system, to see what impact, if any, subsequent government directions will have on the systems and processes of the Family Court. Learnings, insights and evaluations of any changes going forward will need to be looked at from a whānau-centric view, which will ensure a meaningful and inclusive process that is driven by whānau Māori needs, rather than research agendas. In this way, future research may identify whether this time of opportunity for change will truly be acted on.



APPENDIX 3

Survey

MĀORI PERSPECTIVES ON CARE AND PROTECTION IN THE FAMILY COURT ONLINE SURVEY

WHĀNAU EXPERIENCE OF CARE AND PROTECTION IN THE FAMILY COURT

As at 30 September 2018 there were 6400 children in the care of Oranga Tamariki (previously Child, Youth and Family). Tamariki are 'in the care of Oranga Tamariki' if the Family Court has made a custody order in favour of the Oranga Tamariki Chief Executive. Depending on the age of the tamariki, the custody order must be reviewed by the Family Court every six or twelve months until the order is discharged or the tamariki turn 18. The Family Court provides an opportunity for whānau to participate in the decisions being made for their tamariki. However, some whānau disengage from the Court process very soon after their tamariki are removed by Oranga Tamariki or after a s101 custody order is made.

Lack of whānau engagement is an issue because if whānau do not engage with the Family Court, then they lose an important opportunity to achieve a better outcome for their tamariki. Improving Family Court processes for whānau provides a potential solution to reducing the numbers of tamariki Māori in Oranga Tamariki care. The purpose of this online survey is to find out:

- (a) What whānau like about the way the Family Court operates,
- (b) What whānau don't like about the way the Family Court operates; and
- (c) What the Family Court could do to help whānau better engage with the court process.

INFORMATION

This survey is being conducted by Te Kopu Education and Research Limited. The purpose of the online survey is to find out how whānau, with experience of the Family Court, view the Court's care and protection proceedings. Your responses to the survey questions may be used to inform changes to future Family Court processes.

Discussing the requirements of the study with the researcher, and completing the online survey, will take about one hour of your time. The survey questions are about your experience in the Family Court in care and protection proceedings. Your responses will not be linked to you and we will not collect any information that will identify you.

Your participation in this online survey is voluntary. If you do decide to participate in the survey, you may withdraw at any time during the completion of the process.

The online survey information that you provide will not be able to be withdrawn once you have completed and submitted the survey.

If you have any questions or comments about this online survey or about the research, please text the lead researcher **Tania Williams Blyth @ 0273071328**. *Tania may call you, with your consent, to follow up any questions or concerns.*

CONSENT

I have read, and I understand, the above information about the research and about the online survey. I understand that my participation in this online survey is entirely voluntary (my choice) and that I can choose not to answer any particular survey questions.

I understand that I can withdraw and choose not to complete the survey.

I also understand that the information I provide in this survey will be securely stored and available only to the research team. No information that I provide will be attributed to me in any research reports or presentations resulting from the study.

My identity as a survey respondent will be kept confidential to the research team.

I know who to contact, and how, if I have any questions about this research or about the survey.

I give my consent to take part in this survey *

☐ Yes

☐ No

Whānau code number *

Short-answer text

Date *

Day, month, year



Gender

☐ Female

☐ Male

☐ Non-binary/Gender neutral

Age

☐ Under 20

☐ 21-30

☐ 31-40

☐ 41-50

☐ 51-60

☐ 61-70+

I think of myself as mostly being

☐ New Zealand Māori

☐ Pākehā

☐ Pasifika

☐ Asian

☐ European

☐ Other

Tribal affiliation (iwi/hapuu)

What region are you living in? *

- ☐ Northland
- ☐ Auckland
- ☐ South Auckland
- ☐ Waikato
- ☐ Tauranga
- ☐ Bay of Plenty
- ☐ Rotorua
- ☐ Whanganui
- ☐ Taranaki
- ☐ Palmerston North
- ☐ Wellington
- ☐ Christchurch
- ☐ Dunedin

PREVIOUS FAMILY COURT EXPERIENCE

Description (optional)

...

1. What years were you involved with Oranga Tamariki and the Family Court? [tick all that] *

- ☐ Pre-1989
- ☐ 1989-2000
- ☐ 2001-2009
- ☐ 2010-2014
- ☐ 2015-2019
- ☐ I'm not sure

2. How many times have you attended the Family Court? *

- ☐ 1-3
- ☐ 4-6
- ☐ 7-10
- ☐ 11+
- ☐ I'm not sure

3. Where have you attended the Family Court? [tick all that apply] *

- ☐ Northland
- ☐ Auckland
- ☐ South Auckland
- ☐ Waikato
- ☐ Tauranga
- ☐ Bay of Plenty
- ☐ Rotorua
- ☐ Whanganui
- ☐ Taranaki
- ☐ Palmerston North
- ☐ Wellington
- ☐ Christchurch
- ☐ Dunedin
- ☐ I'm not sure

4. What was your role when you went to the Family Court? [tick all that apply] *

- ☐ Tamaiti/tamariki
- ☐ Parent of the tamaiti/tamariki
- ☐ Grandparent of the tamaiti/tamariki
- ☐ Extended whānau of the tamaiti/tamariki
- ☐ Support person of the whānau/tamaiti/tamariki

5a. Did you receive notice (a letter) that your case was going to the Family Court? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

5b. If no, how did you find out that the Family Court was dealing with the case for your tamaiti/tamariki? *

Long-answer text

6a. Do you think you should receive notice from the Family Court? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

6b. Please tell us why you should, or should not, receive notice from the Family Court? *

Long-answer text

7a. Did anyone go to the Family Court with you? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

7b. If yes, who went with you? [tick all that apply] *

- ☐ Whānau
- ☐ Social Services
- ☐ Lawyer
- ☐ Friend
- ☐ Other

BEFORE YOU WENT TO THE FAMILY

Description (optional)

8. Who explained to you where the courtroom was? [tick all that apply] *

- ☐ Oranga Tamariki social worker
- ☐ Your lawyer
- ☐ Lawyer for child
- ☐ Community Law Centre
- ☐ Social Service organisation
- ☐ Whānau
- ☐ Friend(s)
- ☐ No one - I knew where it was
- ☐ I'm not sure

9. Who explained the Family Court process? [tick all that apply] *

- ☐ Oranga Tamariki social worker
- ☐ Your lawyer
- ☐ Lawyer for child
- ☐ Community Law Centre
- ☐ Social Service organisation
- ☐ Whānau
- ☐ Friend(s)
- ☐ No one
- ☐ I'm not sure

...

10. Who explained who was likely to be in Court and what their roles were? [tick all that apply] *

- ☐ Oranga Tamariki social worker
- ☐ Your lawyer
- ☐ Lawyer for child
- ☐ Community Law Centre
- ☐ Social Service organisation
- ☐ Whānau
- ☐ Friend(s)
- ☐ No one
- ☐ I'm not sure
- ☐ Other...

11. Before Court started, did you understand the job of the Oranga Tamariki social worker? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

12. Before Court started, did you understand the job of the Oranga Tamariki lawyer? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

13. Before Court started, did you understand the job of your lawyer? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

14. Before Court started, did you understand the job of the lawyer for the child or children? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

15. Before Court started, did you understand the job of the judge? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

16. Before Court started, did you understand the job of the Family Court registrar? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

...

17a. Did you feel confident attending the Family Court? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

17b. If yes, why did you feel confident? *

Long-answer text

17c. If no, what would have helped you to feel more confident? *

Long-answer text

18a. What do you think the judge could do to help whānau prepare for Family Court? *

Long-answer text

18b. What do you think your lawyer could do to help whānau prepare for Family Court? *

Long-answer text

18c. What do you think the lawyer for child could do to help whānau prepare for Family Court? *

Long-answer text

18d. What do you think the Oranga Tamariki social worker could do to help whānau prepare for Family Court? *

Long-answer text

18e. What do you think the Family Court registrar could do to help whānau prepare for Family Court? *

Long-answer text

18f. What do you think the Family Court staff could do to help whānau prepare for Family Court? *

Long-answer text

IN THE FAMILY COURT

Description (optional)

19. Did you understand what was happening when you were in the Family Court? *

- ☐ Yes
- ☐ Most of it
- ☐ Very little
- ☐ No
- ☐ I'm not sure

20a. If you did not understand something that was said in the Family Court, were you able to ask ^{*} questions?

- ☐ Yes
- ☐ No
- ☐ I understood what was happening in the Family Court
- ☐ I'm not sure

20b. If you weren't able to ask questions, why was this? ^{*}

Long-answer text

20c. If you were able to ask questions, who answered your question(s)? [tick all that apply] ^{*}

- ☐ Judge
- ☐ Registrar
- ☐ Lawyer for child
- ☐ Your lawyer
- ☐ Oranga Tamariki lawyer
- ☐ Oranga Tamariki social worker
- ☐ Other

20d. Did you understand the answer(s) they gave? ^{*}

- ☐ Yes
- ☐ No
- ☐ I'm not sure

21. Did you have a lawyer in the Family Court? ^{*}

- ☐ Yes
- ☐ No
- ☐ I'm not sure

22. If you had a lawyer, did the lawyer tell the judge what you wanted/your concerns? *

- ☐ Yes
- ☐ No
- ☐ I did not have a lawyer
- ☐ I'm not sure

23. Did you want to talk to the judge? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

24. Did the judge ask you if you wanted to say anything? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

25a. Do you think the judge listened to your concerns/views? *

- ☐ Yes
- ☐ No
- ☐ I did not speak to the judge
- ☐ I'm not sure

25b. If yes, what made you think the judge listened? *

Long-answer text

25c. If no, what made you think the judge didn't listen? *

Long-answer text

26a. Do you feel that you were included in the decision-making process in the Family Court? *

- ☐ Yes
- ☐ No
- ☐ I'm not sure

26b. If yes, what made you feel you were included? *

Long-answer text

26c. If no, why don't you feel you were included? *

Long-answer text

27. Did you understand why the judge made their decision? *

- ☐ Yes
- ☐ Mostly
- ☐ Not really
- ☐ No
- ☐ I'm not sure

28. Did you understand what would happen next as a result of the judge's decision? *

- ☐ Yes
- ☐ Mostly
- ☐ Not really
- ☐ No
- ☐ I'm not sure

GENERAL COMMENTS

Description (optional)

29. Overall, what did you like about the Family Court process? *

Long-answer text

30. Overall, what didn't you like about the Family Court process? *

Long-answer text

31. Overall, did you have a 'good' experience in the Family Court? *

- ☐ Yes
- ☐ Mostly
- ☐ Not really
- ☐ No
- ☐ I'm not sure

32. What changes do you think should be made to the Family Court process? *

Long-answer text

APPENDIX 4

Recruitment Poster

ARE YOU MĀORI? ARE YOU A PARENT OR WHĀNAU

who has been involved with
Oranga Tamariki (formerly CYFs)
AND the Family Court?

**WOULD YOU
LIKE TO
TAKE PART
in an ONLINE
SURVEY?**

As at 30 September 2018 there were 6,400 children in the care of Oranga Tamariki (previously Child, Youth and Family). Children are 'in the care of Oranga Tamariki' if the Family Court has made a custody order in favour of the chief executive of Oranga Tamariki. The custody order must be reviewed by the Family Court until the order is discharged or the child turns 18.

As the ultimate decision-maker, the Family Court is a critical lever to effect positive change through disrupting the care to prison pipeline. It is a lever that has not been engaged to date.

There is also a lack of whānau engagement in the Family Court process. This has a significant impact on the decisions being made particularly as they impact on the mana, whakapapa and whanaungatanga of the child.


RESEARCH TEAM: This survey is being carried out by **Tania Williams Blyth (Te Kōpū Education and Research Limited)**. **Whakauae Research for Māori Health and Development** (Whanganui) is providing research support.

WHAT DO WE WANT?: We are looking for Māori parents or whānau who are or have been involved with Oranga Tamariki (formerly CYFs) **AND the Family Court.**

WHY?: We want to learn from whānau. For those who have come to the attention of Oranga Tamariki **AND the Family Court** and in order to get better outcomes for their tamariki and whānau, what would keep them engaged in the Family Court process? If real solutions are **to be found to the rising number of Māori children being placed in Oranga Tamariki care, it is critically important that the voices of whānau are heard. The survey findings will contribute to the development of solutions drawing on the experience of those most affected and in the** best position to comment.

CONTACT: If you would like to participate in the online survey please contact Tania:

text or call 027 307 1328
tania@tekopulegal.co.nz

 Mana Tamariki
Whakapapa
Whanaungatanga

Te Kōpū Education and Research Limited.

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TE TANIWHA I TE AO TURE-Ā-WHĀNAU

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