



RIGHTS FRAMEWORK UNDERPINNING THE CARE AND PROTECTION SYSTEM

The review being conducted by the Office of the Children's Commissioner into what needs to change to allow pēpi Māori 0-3 months to remain in the care of their whānau when Oranga Tamariki have been notified of care and protection concerns is underpinned by a rights framework that includes (but is not limited to):^{1 2}

- Te Tiriti o Waitangi;
- The United Nations Convention on the Rights of the Child (the Children's Convention);
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);
- The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD); and
- Oranga Tamariki Act 1989.

Te Tiriti o Waitangi establishes the relationship between Māori and the Crown and sets out their rights and responsibilities. These include the right of the Crown to govern New Zealand (Article 1); the right of Māori to live as Māori and protect and develop their resources (Article 2); and the right of all New Zealanders to citizenship and equality (Articles 3 and 4).

In an international context, the **Children's Convention**, which New Zealand signed up to in 1993, recognises the right of children to protect and preserve their identity, including their family ties (Articles 7 and 8). Furthermore, Articles 9 and 10 state that children have a right to live with their family and to see them if they are separated from them. If removal from family care is unavoidable, Article 20 puts an obligation on States to take a child's ethnic, religious, cultural, and linguistic background into account when considering alternative care arrangements.

The right of indigenous families and communities to retain shared responsibility for the upbringing of their children is further recognised in the Annex of the **UNDRIP**, which the New Zealand Government has committed to implementing since 2010. Article 7 states that indigenous children have a right not to be forcibly removed from their families.

For children with disabilities, the UNCRPD sets out additional obligations that New Zealand signed up to in 2008. Article 23 states that children with disabilities have an equal right to family life, including any early and comprehensive information, services and support that they and their family need.

In a child protection context, several sections of the **Oranga Tamariki Act 1989 (the Act)** set out rights and obligations that must be considered when the state gets involved in relation to child abuse and neglect, or child and youth offending.

Section 4 makes it clear that the purpose of the Act is to promote the wellbeing of children, young people and their families, whānau, hapū, and iwi. This is complemented by section 4A which states that the wellbeing and best interests of the child or young person must be the first and paramount consideration in any decision made under the Act.

Sections 5 and 13 place obligations on any court or person who exercises any power under the Act to be guided by a number of principles. These include:

- That children and young people must be encouraged and assisted to participate in and express their views about any proceeding, process or decision affecting them, and have these views taken into account;

¹ This is not a complete list. For a list of other human rights treaties see: <https://www.hrc.co.nz/your-rights/what-are-human-rights/>

² If there are custody/guardianship issues, the Care of Children Act 2004 may also be relevant. However, this Act deals with the custody or guardianship of a child outside of the Oranga Tamariki framework and therefore is not included here.

- That the wellbeing of a child or young person must be at the centre of decision-making. This means:
 - ◆ upholding their rights in the Children’s and Disability Conventions
 - ◆ treating them with respect and dignity and protecting them from harm
 - ◆ addressing their need to be in a safe and stable home
 - ◆ recognising their whakapapa and whanaungatanga responsibilities
 - ◆ making and implementing decisions promptly
 - ◆ taking a holistic approach to their identity
 - ◆ endeavouring to obtain their support in making decisions about them, to the extent consistent with their age and development
 - ◆ when making a decision about a child or young person with a disability, having particular regard to their experience and any difficulties or discrimination they encounter
- That the child or young person should be seen within the context of their whānau, hapū, iwi and community. This includes recognising that services and supports provided should aim to strengthen and maintain the relationship between a child/young person and their whānau while improving their safety and wellbeing and reducing the risk of future harm.

This is complemented by Section 7AA which focuses on key principles and concepts reflective of a Te Ao Māori worldview and places specific obligations relating to Māori on the Chief Executive. This is to recognise and provide a practical commitment to the principles of te Tiriti o Waitangi. The Chief Executive is, among other things, to:

- develop policies and practices to reduce the disparity of Māori children by setting measurable outcomes for Māori children and young people who come to the attention of Oranga Tamariki
- set policies and practices to have regard to the mana tamaiti (tamariki) and whakapapa of young children and the whānaungatanga responsibilities of their whānau, hapū and iwi
- develop strategic partnerships with iwi authorities and Māori organisations to encourage innovative proposals to improve outcomes for Māori children, providing opportunities to delegate functions to iwi.

In addition to these principles, section 11 of the Act gives children the right to participate and have their views taken into account in relation to any decision made about them under the Act. The law says that children must be:

- encouraged and helped to participate as much as possible, taking into account their age and maturity level;
- given a reasonable chance to say what they want to happen, and if they have trouble saying what they think or being understood, be given support to express themselves;
- helped to understand the reason for the process that is happening, what the different outcomes might be and how this may affect them; and
- have their views considered when people like judges and Oranga Tamariki workers are making decisions about them under child protection laws.