EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

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IN THE FAMILY COURT
AT AUCKLAND

I TE KŌTI WHĀNAU
KI TĀMAKI MAKAURAU

FAM-2021-004-000342
[2022] NZFC 11766

IN THE MATTER OF	THE ORANGA TAMARIKI ACT 1989
BETWEEN	NEW ZEALAND POLICE Applicant
AND	[GB] Young Person this application is about

Hearing:	14 November and 5 December 2022
Appearances:	T Pedlar for the Ministry Sergeant T Bishara for the Applicant P Kannemeyer for [GB]
Judgment:	7 December 2022

JUDGMENT OF JUDGE A J FITZGERALD

CONTENTS

[GB]

[1] [GB] is of [iwi deleted — iwi 1] whakapapa on his mother's side, and [iwi 2] and Ngāti Pakeha on his father's side. He is 15 years old and is the second born child of his parents, Ms [SR] and Mr [RB]. His older brother [JR] is aged 17. His younger sisters, [OR] and [BR], are aged 13 and 12 respectively.

[2] If given the opportunity, [GB] would like to be more connected to both his maternal and paternal whakapapa. When he spoke about his mother's Marae at [location deleted], his pride in his whakapapa was apparent.

[3] It is important for [GB] to find the right path in life and to receive the help and support necessary to walk it at this crucial stage in his life. His path through life so far has been rough and the past few years have been particularly difficult, especially since becoming involved in the youth justice system.

[4] Before that happened, [GB] was wanting to "step up his game" in all aspects of his life, including returning to school. He identified maths, spelling, reading and sports as the things he enjoyed most. He likes [two types of sports] and said he would like to engage with sports at school or in the community. He also likes rapping and freestyling. When asked what he would like to do when he is older, he said "maybe a [trade deleted]" like his stepdad.

[5] [GB] is already [almost 6 feet] tall ([exact height deleted]) and has natural sporting talent. He was the first to reach the summit of [maunga deleted] when he and the other young people on the Ranga Tū programme took on that challenge in [month deleted] this year. He is described as being "ideal as [positions in two sports]."

[6] In all of the reports I have read,[1] [GB] is described as personable, polite and respectful and that is my consistent experience of him whenever we meet. He has also been described as having "lovely ahua" (good energy).

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[1] The primary source of these comments and other information contained in this section are: Patrick Mendes *Section 187 Cultural Assessment* (15 September 2022) [Cultural Assessment]; Lindsay Brand *Summary Education Assessment Report* (3 August 2020) [Education Assessment]; Paul Ryan *Section 189 Psychological Assessment* (12 July 2022) [Psychological Assessment].

[7] However, it has also been noted that [GB] "talks like he has an enormous weight on his shoulders." Cannabis and other drug use, including at times, methamphetamine, acid and MDMA (Ecstasy), has become a major concern. [GB] says he can feel the effect that marijuana has on him and that his brain "doesn't work like it used to." He meets the diagnostic criteria for substance use disorder and possibly conduct disorder as well.

[8] There are also some things to suggest that [GB] might have a neuro-disability. For example, he has difficulty regulating his emotions and says that he can "get angry out of nowhere – I don't even know why". When he has these moments, he says he is "unable to cool down." Also, [GB] says that if someone tells him to do something, he will do it without thinking of the consequences. Although that is not unusual in young people, it seems that [GB] will often continue with a course of action even when the negative consequences of it become apparent, which is suggestive of perseveration, another symptom of some neuro-disabilities.

[9] [GB]'s problems at school included finding it difficult to focus and sustain attention because it was "overwhelming", and he often felt "claustrophobic" and became frustrated and angry. It is possible that he requires information to be in concrete form and that he struggles with abstract concepts. As a result of his learning difficulties at school, he would often end up in fights at break times. He has been out of school, and not in any form of education since September 2019.

[10] Given his mother's abuse of alcohol and other drugs during pregnancy, there is a possibility [GB] has foetal alcohol spectrum disorder ("FASD"). However, the author of the psychological assessment thought that because [GB]'s mother self-reported low amounts of alcohol use, it is "unlikely to have had a significant effect on [GB]'s development but remains a risk factor for problems, and may be a confounding factor when taken into consideration with his early life experiences of family violence and neglect of his needs."[2]

[2] I suspect someone qualified to properly diagnose FASD would not agree with the opinion that Ms [SR]'s alcohol use, even if at low levels, is unlikely to have had a significant effect on [GB]'s development.

[11] The enormous stress [GB] carries as a result of a lifetime of trauma, manifests in various ways. Sometimes he goes for more than 48 hours without sleeping. Late last year he was depressed and stayed in bed all day "stoned", not eating or sleeping and feeling "messy as." Between the ages of 10 and 13, [GB] deliberately cut himself on occasions because "it [cutting] felt nice". [Details deleted]. He has attempted to take his own life, including an attempt last year that involved some planning and preparation. He now regrets that and described the incident as "dumb shit" and self-harming as "weak minded stuff."

[12] All of those features of [GB]'s life, his place in the world, where and with whom he belongs, his interests, talents and goals, trauma, addictions, struggles and needs, must all be catered for adequately in the plan required to map out his pathway forward in life.

The issue

[13] My primary job is to decide what Family Court order to make for [GB]. The Ministry[3] seek a support order under s 91 of the Oranga Tamariki Act 1989 ("the Act"). The Police and [GB]'s lawyer seek a Custody Order under s 101 of the Act.

[14] However, on its own, the order will not change what is happening in [GB]'s life nor will it address the care and protection issues for him. The order must be the one that best supports a plan that will map [GB]'s pathway out of being in need of care and protection. The plan must specify objectives, detail services and assistance required, state the responsibilities of all concerned and timeframes for getting things done. It is the plan, not the order, that is reviewed from time to time to ensure its objectives are being met. What an adequate plan should contain therefore, is a matter of crucial importance.

[15] Deciding the contents of an adequate plan, and which order should be made to support it, requires a careful analysis of the Act and in particular the care and protection provisions. In doing so, it is essential to appreciate that the Act is

[3] Given the changes of title that have occurred over the years, I will refer to the agency currently known as Oranga Tamariki, the Ministry for Children, including its Chief Executive, as "the Ministry" except where it is necessary to refer to the Chief Executive specifically.

concerned with the ability of the State to intervene in the lives of children either on account of their need for care or protection, or because they have come to the attention of the police. The power to intervene therefore is deliberately and carefully circumscribed. Intervention is a last resort and should begin with the least interventionist option that is consistent with the purposes and principles of the Act. There should only be an escalation in seriousness if the lower levels of intervention have been unsuccessful.

[16] As a result of amendments to the Act that came into force on 1 July 2019, a more sophisticated and nuanced understanding and application of Te Ao Māori is required for taitamariki such as [GB]. The amendments also require that [GB]'s rights under the United Nations Convention on the Rights of the Child ("the CRC")[4] are respected and upheld.[5] Further, they require that a practical commitment to the principles of te Tiriti o Waitangi ("te Tiriti") be demonstrated in the way described in the Act.

[17] Before turning to address each of those issues, it is necessary to provide more detail about [GB], his whānau and the role the State has played in his life and theirs so far. That background is part of the information needed to understand what the plan for [GB] must contain which, in turn, will inform the decision about which order should be made.

The State's role in [GB]'s life

The Ministry

[18] The Ministry was involved with [GB]'s whānau before he was born. His older brother [JR], born on [date deleted] 2005, was removed from the care of Ms [SR] and Mr [RB] on [later that month] and placed permanently with Ms [SR]'s [Aunt] [in

[4] United Nations Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990) [CRC].

[5] Given that [GB] might have a neuro-disability it is possible that his rights under the UN Convention on the Rights of Persons with Disabilities ("the CRPD") might also be relevant. However, because the situation in that regard remains uncertain, I have only focussed on the CRC.

early] 2006. I am told that [JR] is still living with [his Aunt] in South Auckland, and that things are going well in his life.

[19] Ms [SR] and Mr [RB] had been living on the streets and abusing alcohol and other drugs, including cannabis, methamphetamine and solvents, when Ms [SR] discovered she was pregnant with [JR]. Concerns that led to the Ministry's involvement began with a social worker at National Women's Hospital reporting that Ms [SR] had schizophrenia, was unreliable with her medication, had a history of alcohol and other drug abuse and was inconsistent with her antenatal checks. Mr [RB] had a history of alcohol abuse and antisocial behaviour, family violence, and involvement with the Manaaki Mental Health Service. He was also recorded as being very abusive and had made threats against social workers such that the Ministry served a trespass notice on him in 2006.

[20] [GB] was born on [date deleted] 2007. In that month, the Ministry received a notification that Ms [SR] had no antenatal care during her pregnancy and, after giving birth, had left the hospital to go home. There were concerns regarding her ability to care for [GB] given her history of non-compliance and mental illness and also Mr [RB]'s history of serious family violence and the risk those things posed for new-born baby [GB].

[21] In September 2007, there was a whānau agreement to try and address those issues. Mr [RB] was to attend an alcohol and other drug ("AOD") education programme with CADS[6] and both parents were to do parenting and anger management programmes.

[22] During 2008, the Ministry received notifications regarding Mr [RB]'s drinking and [GB] being exposed to verbal abuse, particularly Mr [RB] raising his voice. On [date deleted] September 2008, there was a notification from police regarding family violence and concerns about the emotional abuse and neglect of [GB].

[6] Community Alcohol and Drug Services (CADS) run a number of educational and therapeutic groups for people affected by alcohol and other drugs.

[23] Documents on file refer to such things as Mr [RB] being "extremely intoxicated" and Ms [SR] being admitted to the Emergency Department at Auckland Hospital having received lacerations to her temple as a result of being hit with a clay pot. Concerns were recorded about [GB] being a vulnerable child who was continually witnessing violence perpetrated by Mr [RB] on Ms [SR] and observing her decision to remain in a relationship described as volatile and detrimental to the well-being of [GB] and of [OR] before and after she was born on [date deleted] 2008.

[24] At a Family Group Conference ("FGC") held on 19 January 2009, it was agreed that [GB] and [OR] were children in need of care and protection on the grounds in s 14(1)(a)[7] and (b)[8] of the Act. A plan was agreed upon that involved relationship counselling, a parenting programme and budgeting support for both parents, and personal counselling and gambling support for Ms [SR].

[25] Notifications about ongoing emotional abuse of the children, neglect and family violence between the parents as well as their AOD abuse were constant during 2009 and into 2010 and there were multiple police callouts.

[26] On 4 January 2010, Ms [SR] and Mr [RB] separated and on 20 January 2010, she applied without notice for and obtained a temporary protection order against him. Allegations in the affidavit filed in support of the application included Mr [RB] hitting her on the head with a hammer and being arrested for stabbing her sister's boyfriend with a key.

[27] There was another FGC on 19 February 2010, where it was agreed that [GB] and [OR] would live with their mother on the condition that she complete various programmes set out in the FGC plan. Mr [RB], who was to only have supervised contact with the children, also had programmes to attend.

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[7] At that time, the grounds relied upon under s 14(1)(a) were that the children were being, or were likely to be, harmed (whether physically, emotionally, or sexually), ill-treated, abused, or seriously deprived.

[8] Under s 14(1)(b), the grounds were that the children's development or physical, mental, or emotional well-being was being, or was likely to be, impaired or neglected and that impairment or neglect was, or was likely to be, serious and avoidable.

[28] The protection order was made final on 21 April 2010 and then on 23 April 2010, there was a judicial conference regarding the parenting application. As a result of an application by the children's lawyer, the Ministry were joined as a party to the parenting proceedings. A referral had also been made to a care and protection FGC coordinator under s 19 of the Act. The application for a parenting order was withdrawn by leave when the Ministry applied for a declaration regarding the children's need for care and protection and for orders under the Act which I will turn to soon.

[29] [BR] was born on [date deleted] 2010.

[30] On 3 August 2010, there was another FGC, this time in relation to [GB], [OR] and [BR]. Agreement was reached that they were all in need of care and protection on the grounds in s 14(1)(a) and (b). There was also agreement as to the making of a declaration and a custody order. Ms [SR] was to enter the Merivale Residential Programme for women and children with [BR]. [GB] and [OR] would be transitioned into her care after a month as long as Ms [SR] was compliant and there were no concerns held by Merivale. Mr [RB] was to refer himself to AOD counselling and an anger management programme.

The Family Court

[31] The documents filed by the Ministry at the Family Court included an application for a s 92 interim support order and a custody order. The former was required before the making of the declaration to give the Ministry authority to visit, monitor and support Ms [SR] at home with [BR].

[32] On 1 October 2010, a declaration was made that the children were in need of care and protection on the grounds in s 14(1)(a) and (b) as well as a custody order. It appears that the plan agreed to at the FGC held on 3 August 2010 was treated as the plan required under s 128 of the Act before the custody order could be made. The plan was to be reviewed in six months.

[33] Concerns continued into 2011, including Ms [SR] being diagnosed with [a virus]. However, on a positive note, a social worker took Ms [SR] and the children to

Mr [RB]'s graduation from the Salvation Army Bridge programme on [date deleted] 2011, and that was a happy occasion for everyone.

[34] In December 2011, review papers were filed at the Family Court. The goal at that time was for Ms [SR] to continue having full-time care of [GB], [OR] and [BR] and to parent them on her own. The issue of Mr [RB]'s contact with the children was to be kept under review and he was to seek legal advice on that issue. However, the review was delayed because the children's lawyer had concerns about their vulnerability given Ms [SR]'s health problems, drug use, the need for respite care and the ongoing family violence.

[35] Negotiations to address those concerns took place during 2012 and eventually an amended plan, dated 21 September 2012, was presented to the Court. That plan was approved on 8 January 2013, the custody order continued, and a support order was made.

[36] The plan for the next review, which was dated 4 July 2013, was remarkably brief. The objectives in it were to support Ms [SR] in her parenting of the children and to organise supervised access between Mr [RB] and the children. The social worker was to monitor the situation by visiting the children every two months.

[37] The plan was reviewed on 7 November 2013. The plan was approved, the custody order was discharged, and another support order made. The Judge recorded, amongst other things, that the children were being extremely well cared for by their mother. However, Mr [RB]'s situation was such that the Judge predicted that it would be a long time before anything other than tightly supervised contact could ever be considered.

[38] The support order was then extended when the plans were reviewed in July 2014 and February 2015. On both occasions the plan was almost identical to the brief one filed when the second support order was made on 7 November 2013.

[39] In October 2015, the children's lawyer raised concerns about their well-being and did not support the plan that had been presented to the Court. The concerns

included Ms [SR] leaving the children with Mr [RB] unsupervised, leaving them with a neighbour so she could go to the pub "regularly" and playing pool "excessively". A Judge directed that the social worker investigate the concerns and report within seven days. That report left the children's lawyer "far from satisfied" about the children's situation.

[40] It was the same in June 2016, when a Judge noted the serious ongoing concerns regarding the children raised by their lawyer. It was said that the Ministry had been constantly alerted to these concerns. The Judge shared those concerns and directed the Ministry to urgently visit the children and report to the court within seven days.

[41] The resulting report only added to the concerns with the Judge noting, "There are ongoing serious concerns for the children, including Mr [RB] being in the home looking after the children and his sister being on bail there "charged with GBH". The Ministry was directed to reconsider ways to ensure the children's care needs were properly met.

[42] On 12 September 2016, the support order was extended for a further three months and again in December 2016 when the Judge commented that the proposal to further extend the support order for another six months was "entirely appropriate".

[43] At the review in July 2017, it was noted that the support order was still current and that the children were living with their mother. But surprisingly, and at odds with the reports provided for the reviews of plans during 2015 and 2016, and most reviews before that, the social worker said that Ms [SR] was caring and providing well for the children and that "they are thriving and there are no longer any care and protection issues".

[44] The support order was discharged on 9 October 2017. The Judge recorded that the children's lawyer thought there was little further that could be achieved with the Ministry's ongoing involvement and that the oversight of the children's school was probably the best protective measure that had been in place to date. It was also noted that the children's lawyer still had lingering concerns about their welfare but that it

was in their best interests to live their lives without interference of others including the Ministry.

[45] Schooling did not prove to be an effective measure to monitor [GB]'s situation because his attendance was poor. In September 2019, he was stood down from school due to bad behaviour and then taken off the roll for continuous non-attendance. He has not been in any form of education since.

The Police

[46] [GB] started coming to the attention of the police because of the offending he and his friends were allegedly involved in throughout 2019 and 2020. He is alleged to have been involved in aggravated robberies, robberies, burglaries, thefts, wilful damage, unlawfully taking or getting into motor vehicles, and driving them dangerously and at great speeds to evade the police. [GB] is quoted as saying that his primary motivations for being involved were the adrenaline rush and getting money for drugs.

[47] As well as that, [GB] was often being reported missing and his behaviour at home with his mother was getting worse and beyond her ability to cope. In March 2020, she arrived home to find that [GB] and a friend had kicked holes in the walls and broken windows. She contacted the police and told them [GB] was "living like a hoodlum", sleeping at friends' houses and rarely coming home. The Ministry became involved and made repeated unsuccessful attempts to place [GB], including with an uncle. [GB] ran away every time and disappeared for weeks. Eventually he was placed with his father.

[48] The only non-secure placement [GB] has not absconded from was in [location deleted – location A] where he was placed on remand in September this year. That is in the homeland region of [iwi 1] and near Ms [SR]'s Marae which [GB] was able to visit. As mentioned earlier, [GB] talks with pride about that visit.

[49] Not surprisingly, moving in with his father has been problematic for [GB]. Initially the situation was very chaotic and described in one report as "literally couch-

surfing for a period and practically homeless." [GB] had never lived with his father who had no parenting experience. Mr [RB] is a self-described "functioning alcoholic" who apparently says he has no intention to stop his drinking. The relationship between the two is volatile and [GB] has assaulted his father a number of times.

[50] However, [GB]'s clear and consistent wish is to remain living with his father. He tends to come and go from there as he likes, but it is always the place to which he returns. Despite all the trauma caused to [GB] and his sisters throughout their lives by exposure to terrible family harm events, chronic parental substance abuse, neglect and all the other things that have concerned the professionals and agencies involved, the children described access visits with their father over the years as being happy times. Even now [GB] rates his feelings of safety when with his father as "10 out of 10." He says he feels really safe when he goes home.

[51] FGCs were held in 2020 and 2021 in relation to the care and protection concerns for [GB]. The plans formulated there were all very similar and ultimately ineffective in addressing the concerns. The standard features of the plans were re-enrolling [GB] at school (which has been completely unsuccessful), arranging a mentor for him, providing AOD counselling for him and including the Reduced Youth Offending Programme ("RYOP") which provided Multi-Systemic Therapy ("MST")[9] for [GB] and his father.

The Family Court again

[52] On 16 April 2021, when [GB] was aged 13, [Constable A] applied to the Family Court for a care or protection order relying on the grounds in s 14(1)(d)[10] and (e)[11] of the Act. A duty judge made an interim custody order under s 78 of the Act which remains in place today.

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[9] Multisystemic therapy (MST) is a family-focused and community-based treatment program for young people who offend who are possibly abusing substances.

[10] That [GB] has behaved, or is behaving, in a manner that is, or is likely to be, harmful to his physical, mental or emotional well-being or others and [GB]'s parents are unable or unwilling to control him.

[11] That [GB] has committed an offence or offences of sufficient number, nature, or magnitude to cause serious concern for his well-being.

[53] An FGC was held on 25 May 2021 and, after agreeing that the s 14(1)(e) care and protection grounds were met, another plan was formulated that contained the same things as the previous FGCs. However, it also included obtaining an education assessment and following up recommendations from a Gateway Assessment completed in August 2020. [GB] was also to do some community work, write apology letters which were to be accompanied by a gift or koha of [GB]'s choice, and he was to create a presentation "about the progress he has made during his time with Youth Justice". This was done despite the fact that he was still 13 years old, and the FGC was a care and protection FGC. Although the grounds concerned offending behaviour by [GB] as a child, the approach required was a care and protection one rather than a youth justice, criminal law approach.

[54] Under a heading "7AA", the following is recorded:

- [Mr [RB]] will inform [GB] and his siblings of their whakapapa on his side of the family.
- [Ms [SR]] will inform [GB] and his siblings of their whakapapa on her side of the family.

[55] On 3 June 2021, [Constable A] filed a charging document in the Youth Court in relation to an aggravated robbery that [GB] is alleged to have been involved in on [date deleted] January 2021 when he was 13. That charge was one of those referred to in the application made to the Family Court on the grounds in s 14(1)(e). As a result, [GB] appeared in the Youth Court crossover list[12] on 21 June 2021.

[56] The forensic clinician who saw [GB] that day had concerns about his psychological functioning, trauma, possible PTSD and anger issues. It was recommended that a forensic report be ordered to assess those issues as well as [GB]'s fitness to stand trial in relation to the offending he is alleged to have committed as set out in the application to the Family Court. The report was ordered, and at the time, it was estimated that it would take about 8 weeks to complete. For reasons I will explain shortly, it took more than a year.

[12] The crossover list in Auckland caters for those children and young people who, like [GB], face charges in the Youth Court and also have care and protection proceedings before the Family Court. In all such cases, the issues before both courts have much in common, in particular where the child or young person should live and the supports needed.

[57] Also, on 21 June 2021, a direction was made that the FGC reconvene, and it was recommended that the invitations be extended to include the hapū and iwi to which [GB] has a whakapapa and also revisit the supports being provided for [GB] and his father. It had been mentioned that [GB] had been doing well when he had a mentor, but he was only allocated 16 hours and when that ran out, he was left without support. An interim support order was made that day under s 92 of the Act to try and ensure that appropriate support was provided and also as means of imposing bail-like conditions in accordance with s 96 of the Act.

[58] There was further discussion about those issues at another judicial conference on 19 July 2021 when a cultural report was ordered under s 187 of the Act. I was told that the FGC coordinator had sent out invitations to hapū and iwi to attend the FGC. The need to develop a plan that included appropriate supports and services for [GB] and for his father was discussed. It was noted that [GB]'s father was struggling and issues of poverty, the need for respite care, and support for both parents as well as for [GB] needed to be addressed.

[59] Another FGC was held on 12 August 2021. The plan was much the same as the previous ones, but it did also include some respite time for [GB] to stay with an uncle and with family friends. A referral was to be made to Youth Horizons Trust for Functional Family Therapy ("FFT"). Under a heading "7AA" it is recorded that there was someone present to provide "cultural support" and under the heading "Cultural support" it records that a kaiawhi had offered to support and connect [GB] and his whānau with their whakapapa.

The Youth Court

[60] [GB] is now facing 13 charges in the Youth Court. At the hearing on 5 December 2022, two charges were dismissed because there was insufficient evidence to support them and 15 were withdrawn by leave due to irregularities in the convening and holding of FGCs. Four of the remaining charges are the subject of an application to dismiss due to delay and three are the subject of an application to dismiss due to failure by the police to comply with a disclosure order. The remainder are not

denied and will be considered at an FGC before [GB]'s next hearing on 16 January 2023.

COVID 19 lockdown

[61] At 23.59 pm on 17 August 2021, Auckland went into a COVID 19 level 4 lockdown that lasted for months and had an extremely negative impact on the lives of many people that endures still.

[62] For young people such as [GB], the lockdown was especially difficult in a variety of ways. There was significant delay in progressing [GB]'s case. For example, the psychological report ordered on 21 June 2021 was not completed until 12 July 2022. The cultural report ordered on 19 July 2021 was not completed until 15 September 2022. Further, the enormous backlog of work has meant ongoing delay in [GB]'s case.

[63] It was not until 8 September 2022, that an FGC was held. Only the care and protection grounds in s 14(1)(d)(i) and (ii) were considered. The plan was essentially the same as all the previous ones. New content was for [GB]'s social worker to explore the possibility of him attending the Ranga Tū programme and also for enquiries to be made at [a Marae], which is near to where [GB] and his father live, to see what programmes are available there. There was no agreement about the order to be made to support the plan.

[64] Delay has not been the only negative impact. During lockdown none of the things that would normally happen "in person" for someone in a situation like [GB]'s were possible. Court appearances were not in person, nor were FGCs, counselling, therapy, programmes, mentoring and more. Although efforts were made to do as much as possible virtually, that could never be an adequate means of providing the type of support someone in [GB]'s situation needed.

[65] By the end of 2021, most people in the region were finding the situation difficult to manage, but for those living in difficult and disadvantaged circumstances it was especially hard. Many young people like [GB] were starting to unravel, but

there was little that could be done to provide the support needed while they waited and waited for progress to be made with their court cases.

The hearing

[66] Given the crucial part the plan has to play in determining the order that should be made, I begin by setting out what the plan prepared by [GB]'s social worker with help from [GB]'s lawyer, consists of. I will then set out the position of the Ministry, Police and [GB]'s lawyer, all of whom considered the plan "comprehensive" and adequate. However, as I will explain later, I disagree.

The plan

[67] The purpose of the plan, dated 20 September 2022, is to support [GB] continuing to live with his father. Access between [GB] and his mother is to be on an informal basis when she visits the home. That is said to be working well. [OR] is living with [GB] and Mr [RB] and [BR] is visiting regularly.

[68] Under a heading "Family/whānau/hapū/iwi/marae/family group" it says:

> "[GB] has an aunt and uncle mentioned in the plan whom he would like to see regularly for respite. Apart from this whānau, [GB] has limited connections in the Auckland area. [GB] appears to have made some connections with his whānau when he spent time in [location A] on remand. [GB] is aware of his whānau connections in Christchurch however at this stage he does not wish to have access with them."

[69] The remainder of the care and protection plan consists of the following:

(a) [GB] will continue living with his father, on EM bail and he must adhere to strict bail conditions.[13]

(b) He is to attend the Odyssey House AOD community programme which can include addressing anger management issues.

[13] [GB] is no longer on EM bail. On 5 December 2022, he was remanded on normal bail.

(c) [GB] was to attend the MYND[14] programme, even though he had not responded well there.[15] At the hearing I was told he has left MYND to transition to the TROW programme.[16] However, Ms Herbert (the education officer at the hearing) explained that [GB] cannot officially start at TROW until he turns 16, on [date deleted] 2023, unless he gets an early leaving exemption.

(d) The plan referred to [GB] attending the Ranga Tū programme,[17] but I was told at the hearing he has finished that. The completion report is very positive about [GB]'s attitude, engagement and interest in tikanga.

(e) Mentoring with MacStrong for four hours each Saturday.

(f) Mr [RB] is to continue to "ensure he is aware and willing to address his alcohol use" (something he has not done throughout the entire time the Ministry has been involved with the whānau and he shows no interest in doing so now I am told).

(g) The Ministry and [a local Marae] will ensure Mr [RB] receives appropriate support around his parenting of his children. The police say there are currently no such supports in place.

(h) When [GB] needs a break from his father he will stay with an aunt and uncle in [the Auckland area].

[70] That is the entire plan provided for the purpose of addressing all of [GB]'s care and protection needs. The time frames for meeting those objectives are often described as "ongoing". It is much the same as every previous plan but does not

[14] The Mentoring Youth New Direction ("MYND") programme is an 'intervention' programme for young people aged 14–18 who offend. It has an emphasis on working with the young person in the community to create attitudinal and behavioural change. It is not an education programme.

[15] His attendance was less than 50 percent and dropped off significantly after he moved in with his father.

[16] TROW Group is one of New Zealand's largest deconstruction contractors. TROW runs the Open Classroom initiative which is an alternative form of education to support and mentor the transition of at-risk youth (in the Youth Court system and/or not in education) to further training and employment.

[17] This programme, run by Tū Māia (the Regional Youth Forensic Service where Mr Mendes who wrote the cultural report works), is described as a Te Ao Māori programme which aims to motivate and stimulate young people's interest in Tikanga.

include any MST, despite the psychologist saying that might be beneficial if [GB] is to remain with his father.

[71] There is nothing in the plan, nor the accompanying social work report, regarding health issues, apart from the AOD counselling. An earlier report, dated 24 August 2021, simply notes that [GB] remains unenrolled with a GP and that a health assessment scheduled for August 2021 was cancelled due to the COVID 19 level 4 lockdown and "it is unclear when this will be re-scheduled."

[72] The August 2021 report states that the Ministry is worried about Ms [SR] and the two girls living in the home with [GB] and Mr [RB] and that the two girls are "witnessing the behaviour displayed by [GB] and this is impacting on their well-being". However, the social work report of 20 September 2022, provided with the plan does not identify any concern for the two girls, despite the fact that family harm incidents continue to occur in the home.

[73] In relation to cultural considerations, the August 2021 report mentions that a referral was made to the Kairanga team "to assist with finding whānau and making links to whānau's culture" (*sic*). It also mentions [GB]'s whakapapa to [iwi 2] and [iwi 1] and then says, "[GB] did not show much interest in learning about his whakapapa connections and was not aware of his pepeha." The September 2022 report does not mention the Kairanga team. It refers to [GB] doing the Ranga Tū programme and his visit to [location A] and childhood memories of travelling to [location deleted].

The Ministry's position

[74] For the Ministry, Mr Pedlar points out that the only home [GB] will stay at is his father's and [GB]'s wishes must be taken into account as required in ss 5(1)(a) and 11(2)(d) of the Act. The Ministry believe that the appropriate thing to do is support that placement as best they can and therefore a support order is most consistent with the plan, and in keeping with the scheme of the Act.

[75] Mr Pedlar helpfully and correctly goes through the process I must follow to arrive at my decision by reference to the relevant provisions of the Act. I agree with his submissions up to the point about the plan being compliant.

[76] Mr Pedlar rejects Mr Kannemeyer's submission that the Ministry are seeking a support order rather than a custody order to avoid having to vet and approve potential whānau placements for respite care. First, Mr Pedlar points to the Ministry's duty under s 93 of the Act to monitor and support the plan. Secondly, he points to the conditions that apply to a support order under s 95 of the Act which enables the Ministry to enter places where [GB] is staying and decide about places where he must not reside. It also requires Mr [RB] to keep them informed about where [GB] is staying and specifies the people [GB] is not to associate with.

The Police position

[77] The police are very concerned about the situation not only for [GB] living with Mr [RB], but also for [OR] who is living with Mr [RB] and [BR] who often visits. Attached to the police submissions is a report of family harm incidents at the property that have resulted in repeated police callouts since September 2021. The most recent was on [date deleted] November 2022 and involved Mr [RB] and [BR].

[78] [Constable A] has worked very hard to try and address the situation in the home for [GB]. In addition to bringing the application to the Family Court, her efforts have included helping Mr [RB] find accommodation, responding to family harm reports, and receiving frequent calls from Mr [RB] who, she says, feels unsupported by the other agencies. [Constable A] says that the police are unaware of any services currently engaged to increase Mr [RB]'s capacity to parent any of the children adequately.

[79] The police believe a custody order is necessary for [GB]. They say they will seek leave to withdraw their application that relies on the grounds in s 14(1)(e) only if the court makes a custody order.

The position of [GB]'s lawyer

[80] Mr Kannemeyer says the contents of the plan are not in dispute and that he has been actively involved in the development of it. He describes the plan as being "comprehensive" and that it sets out a range of supports that cover various aspects of "well-being and whakapapa" including the recommendations from the cultural report of Mr Mendes (that in fact had not been released at the time the social work report and plan were prepared). Mr Kannemeyer goes on to say that he is "fully supportive" of the plan and can see no shortcomings in it. He sees "real merit" in [GB] being placed with his father but acknowledges that it comes with real risk, challenges and difficulties.

[81] As mentioned above, Mr Kannemeyer believes the Ministry are seeking a support order rather than a custody order to avoid having to vet and approve potential whānau placements for respite care. He believes that a custody order would inhibit the Ministry's ability to find respite care options for [GB] because they would need to approve such placements and will be unable to do so.

[82] Mr Kannemeyer submits that arranging Te Reo lessons for [GB] is one way of satisfying the principles of the Act relating to culture. He says that given the explicit principles enshrined in the Act regarding identity, whanaungatanga, whakapapa and the Treaty of Waitangi, there is an onus on the Chief Executive to ensure that young people of Māori descent are provided with an opportunity to learn their language.

The Act

[83] As mentioned earlier, the Act is concerned with the ability of the State to intervene in the lives of children[18] either on account of their need for care or protection, or because they have come to the attention of the police. In [GB]'s case the State has

[18] A child is defined in the Oranga Tamariki Act 1989 as a person under the age of 14 years and a young person means a person of or over the age of 14 years but under 18 years. Under the CRC a child is defined as a person under 18 years of age. For simplicity and consistency, I will simply refer to "child" or "children" throughout the rest of the judgment and will not add the words "young person" or "young persons" as well unless that is relevant.

intervened in both respects. The Act, primarily, must guide what I regard as an adequate plan and what I determine is the appropriate order for [GB].

Purposes of the Act[19]

[84] The purposes of the Act are to promote the wellbeing of [GB] and his whānau, his hapū and his iwi by complying with a detailed, carefully defined list of requirements and obligations. The promotion of [GB]'s wellbeing, and that of his whānau, his hapū and his iwi, must be achieved by doing all the following things:[20]

(a) Establishing, promoting or coordinating services that are designed to affirm [GB]'s mana, are centred on his rights, promote his best interests, advance his well-being, address his needs, provide for his participation in decision making that affects him, advance positive long-term health, educational, social, economic or other outcomes for him and are culturally appropriate and competently provided.

(b) Supporting and protecting [GB] to prevent him from suffering harm, abuse, neglect, ill-treatment or deprivation, or to respond to those things.

(c) Assisting his whānau, hapū and iwi at the earliest opportunity to achieve those same things and to fulfil their responsibility to meets his needs. Also, assisting them by developing their capacity to do those things for themselves.

(d) Ensuring that [GB] has a safe, stable and loving home and support to address his needs.

(e) Providing a practical commitment to the principles of te Tiriti in the way described in the Act.

(f) Recognising [GB]'s mana, his whakapapa and the practice of whanaungatanga.

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[19] Section 4.

[20] The focus here is on the care and protection issues on the s 14(1)(d) grounds only. The application that relies on the s 14(1)(e) grounds, and Youth Court matters are being addressed separately.

(g) Maintaining and strengthening the relationship between [GB] and his whānau, his hapū and his iwi and his siblings.

(h) Assisting [GB]'s transition to independence.

[85] There is a strong emphasis in those purposes on not only ensuring that [GB]'s well-being and needs are met, but also on the active involvement of his whānau, hapū and iwi in that process. That is to occur in a culturally competent way in which the Ministry's Chief Executive provides a practical commitment to the principles of te Tiriti and in a way that assists [GB]'s whānau, hapu and iwi to develop the capability to ensure that his well-being and needs are met. The plan I approve and the order I make must be consistent with these purposes.

Well-being and best interests[21]

[86] [GB]'s well-being and best interests in relation to his care and protection are the first and paramount consideration having regard to the general principles[22] of the Act and the care and protection principles too.[23]

[87] The requirement to have regard to those principles when identifying what is in [GB]'s well-being and best interests is important. Following on from the purposes in s 4, it is further guidance as to the lens through which we must view the well-being and best interests of Māori children in particular. That begins with recognising that it is not possible to talk about [GB]'s well-being and best interests without in the same breath talking about the well-being of his whānau, hapū and iwi. Equally we cannot devise an appropriate plan regarding his care and protection without involving his hapū and his iwi as well as his whānau. Given the long term and ongoing dysfunction in [GB]'s immediate whānau, which has resulted in State intervention yet again, the involvement of hapū and iwi is essential.

[88] In my respectful opinion, these cultural features of the Act do not simply form part of a "holistic analysis in which [the child] must be at the centre of the decision-

[21] Section 4A.
[22] Section 5 (considered below).
[23] Section 13 (considered below).

making" with "no particular principle [being] legislatively mandated to trump another" as has been suggested previously.[24] That approach is not consistent with the scheme of the Act.

[89] The Act requires that when the State intervenes in the lives of Māori children, their well-being and best interests must be seen as inextricably linked to their whānau, hapu and iwi whose well-being is inextricably linked to the child's. That imperative is not "culture" as an issue to be treated on an equal basis with such things as health, education, social, economic and other important factors. It is the lens through which we must view the well-being of Maori children as opposed to the Eurocentric lens which sees the child as a more autonomous being.

[90] That is, of course, not to say that a Māori child who is happy, settled and attached to non-kin caregivers must be removed and placed immediately with whānau, hapū or iwi, especially if doing so would cause emotional and psychological harm. Such decisions must be made having regard to all factors which have a bearing on the well-being and best interests of the child in the particular case.

[91] However, in any such situation, the assessment of that child's well-being must be done through the Te Ao Māori lens provided by the Act. If that child is not placed with whānau, hapū or iwi, the connections between them must at least be established if they do not exist, and if they do exist, they must be maintained and strengthened. Given that the child's non-kin placement will usually have been made by the Ministry, the Chief Executive has a duty, both under the Act and under te Tiriti, to see that those connections are at least made, maintained or strengthened if a change of care does not occur.

General principles[25]

[92] As I have just mentioned, regard must be had to the following general principles when considering [GB]'s well-being and best interests. Every person exercising powers in these proceedings must be guided by all these principles. Making

[24] *Chief Executive of Oranga Tamariki v MQ* [2021] NZFC 9089 (currently under appeal).
[25] Section 5.

an order that requires a plan is exercising such a power and so I must be guided by the following principles in reaching my decisions:

(a) [GB] must be encouraged and assisted to participate in the proceedings and to express his views about them and any process or decision affecting him, and his views should be taken into account.

(b) [GB]'s well-being must be at the centre of decision making affecting him, and in particular:

(i) His rights under the CRC[26] must be respected and upheld and he must be treated with dignity and respect at all times and protected from harm;

(ii) The impact of harm on him, and the steps to enable his recovery should be addressed, as should his need for a safe, stable and loving home;

(iii) [GB]'s mana and well-being should be protected by recognising his whakapapa and the whanaungatanga responsibilities of his whānau, hapū and iwi;

(iv) Decisions should be made and implemented in a time frame appropriate to [GB]'s age and development;

(v) [GB] must be seen as a whole person and so we must adopt a holistic approach that includes such things as his developmental potential, educational and health needs, whakapapa, cultural identity, gender identity, sexual orientation, age and more; and

(vi) We must endeavour to obtain [GB]'s support for the actual or proposed exercise of any powers in decisions involving him.

[26] And possibly the CRPD.

(c) [GB]'s place within his whānau, hapū and iwi should be recognised as should the fact that they have the primary responsibility for caring for him and nurturing his wellbeing. We need to consider the effect of decisions we make on his relationship with his whānau, hapū, iwi.

(d) [GB]'s sense of belonging, his whakapapa and the whanaungatanga responsibilities of whānau, hapū and iwi, should be recognised and respected. Wherever possible his relationship with them should be maintained and strengthened and they should participate in decisions and their views be considered.

(e) That includes making endeavours to obtain the support of [GB]'s parents for what is happening in relation to [GB] whose place in his community should be recognised. In particular, how a decision affects his stability and the impact of disruption on his stability. Also, existing networks and supports for [GB] and his whānau, hapū and iwi should be acknowledged and, where practicable, utilised.

[93] Some of the key concept's referred to above are defined in the Act as follows:

(a) **mana tamaiti,** means the intrinsic value and inherent dignity derived from [GB]'s whakapapa (genealogy) and his belonging to a whānau, hapū, iwi in accordance with tikanga Māori.

(b) **whakapapa**, means the multi-generational kinship relationships that help to describe who [GB] is in terms of his mātua (parents), and tūpuna (ancestors), from whom he descends.

(c) **whanaungatanga**, means –

(i) the purposeful carrying out of responsibilities based on obligations to whakapapa;

(ii) the kinship that provides the foundations for reciprocal obligations and responsibilities to be met;

(iii) the wider kinship ties that need to be protected and maintained to ensure the maintenance and protection of their sense of belonging, identity and connection.

Care and protection principles[27]

[94] Section 13 begins by reiterating the paramountcy principle contained is s 4A. Then, in addition to reiterating the general principles I have just mentioned, it sets out further principles. The main features in [GB]'s case are:

(a) An emphasis again[28] on the early provision of support and services to address care and protection concerns and also to support his parents.

(b) Requiring that any such supports and services strengthen and support [GB]'s whānau, hapu and iwi to care for him, nurture him and reduce the risk of harm to him.

(c) Recognising and promoting [GB]'s mana, whakapapa and the relevant whanaungatanga responsibilities of whānau, hapū and iwi.

(d) Doing these things on a collaborative, consensual basis so that any powers exercised without consent are limited to only those situations where it is necessary to protect [GB] from harm.

(e) Only removing [GB] as a last resort and where there is a risk of that happening, providing his whānau, hapū, iwi with assistance and support unless it is impracticable or unreasonable to do so. Where that risk of removal exists, plans for [GB]'s long-term stability and continuity of living arrangements should start early and include steps to make an alternative care arrangement him.

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[27] Section 13.
[28] See s 4(1)(d).

(f) Decisions must produce outcomes that are in [GB]'s best interests and should be thorough enough to ensure his well-being. He should only be removed from the care of whānau, hapū, or iwi if there is a serious risk of harm to him. If he is removed, he should be returned to his whānau, hapū or iwi, wherever possible and consistent with his best interests.

[95] The structure of these principles is clear. State intervention is a last resort and should only be resorted to when the early supports and services provided have not been successful in addressing the concerns. When intervention is required it should involve whānau, hapū and iwi and be carried out in a collaborative and a culturally appropriate way. It should always begin with the least interventionist option and should only escalate in seriousness if the lower levels of intervention have been unsuccessful.

Structure of the care and protection provisions

[96] The structure of the care and protection provisions of the Act is similar to the structure of those principles. State intervention is the last resort and should only occur when the care and protection needs cannot be met by other means.

[97] There are various options available to address concerns without bringing proceedings to court. For example, making decisions, recommendations and formulating plans at FGCs[29], and temporary[30] and extended[31] care agreements in situations where a parent[32] is unable or unwilling to care for a child on either a temporary or a longer-term basis.

[98] When proceedings are brought to the Family Court, pre-requisites to the making of the orders available under the Act[33] include the holding of an FGC,[34] and

[29] Sections 29, 29A, 30.
[30] Section 139.
[31] Section 140.
[32] Here and in future throughout the judgment the mention of a parent or parents also includes a guardian or other person having the care of the child unless stated otherwise.
[33] Other than those that can be made without notice.
[34] Section 72. See also s 70 – no application for an order unless an FGC has been held.

the court needing to be satisfied that the child's need for care and protection cannot be met by other means.[35]

Orders[36]

[99] The main available care or protection orders are set out in s 83 of the Act. Section 83 contains a jurisdictional prerequisite to the making of an order that a child is in need of care or protection on one or more of the grounds contained in s 14 of the Act. Once that prerequisite is found, a discretionary gateway is opened to consider making one or more of a range of orders.

[100] That range begins with the options of discharging the child and/or parents from the proceedings, ordering that they come before the court if called upon within two years for further action to be taken, and ordering counselling for a child, parent or a person whose conduct has or might result in a restraining order being made.

[101] There are some orders that can be made without the need to get a report and plan first.[37] These are the lower intervention orders, as least as far as the child is concerned. However, there are five orders that do require plans. They are a services order;[38] a support order;[39] a custody order;[40] an order appointing someone a sole guardian of the child;[41] and a special guardianship order.[42] These are the higher intervention orders.

[102] Of those orders, only a support order has a statutory expiry date. It cannot exceed 12 months and cannot be extended.[43] When it does expire, in the absence of

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[35] Section 73.
[36] In a paper entitled *Section 91 OTA Appendix*, her Honour Judge Parsons helpfully set out the background of support orders and commented on how they should be used. I am grateful to her for generously allowing me to use it for this analysis.
[37] A s 87 restraining order, s 102 interim custody order, an order under s 110 appointing a person an additional guardian and an order under s 121 for access and other rights.
[38] Section 86.
[39] Section 91.
[40] Section 101.
[41] Section 110.
[42] Section 113A.
[43] Oranga Tamariki Act 1989, s 91(1). It is suggested that implicit in observing the effect of the s 91 statutory time limit, any s 92 interim support order cannot endure beyond 12 months either. See also *C v G* [2012] NZHC 1271 at [21] - [22] per Venning J.

any other care or protection order, there will be no proceedings before the Court and a fresh s 68 application will be required if further orders are sought.

[103] A review of the plan is required before the support order expires[44] and an effectiveness report is required on the expiry of the order.[45] That reflects the initial purpose of the support order which was to ensure children remained in homes with support when the equivalent of the s 83 jurisdictional prerequisite was satisfied. Support orders were regarded as a lesser intervention than custody orders within a hierarchy of increasingly interventionist alternatives.

[104] The support order comes with a number of important features. There is the duty on the Ministry to provide support,[46] and the conditions[47] that attach to it that Mr Pedlar referred to in his submissions.[48] There is also the power to impose additional conditions, including bail-like conditions[49] (which are unnecessary at this time because [GB] is currently on bail in the Youth Court proceedings). In addition, the Court may impose yet further conditions specific to a parent of a child aged 14 to 16 years inclusive, to carry out their duties and responsibilities and promote co-operation between the parents, the child and the support person.[50]

[105] Another order with a statutory time limit is a s 102 interim custody order which cannot continue in force for more than six months after the date on which it is made.[51] However, there is the ability to make one, but only one, further interim custody order. No plan is necessary to make this order. It is therefore intended to be a short-term low intervention order.

[106] It is of note that the statutory time limit of a support order, reflects the total time limit available on a s 102 interim custody order. This supports the initial intention for support orders to be utilised first, before making a longer term and more interventionist custody order. Custody orders are intended to be more interventionist

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[44] Section 134.
[45] Section 99.
[46] Section 93.
[47] Section 95.
[48] See [76] above.
[49] Section 96.
[50] Section 97.
[51] Section 102(2).

than support orders and are clearly intended for those situations where a child needs to be placed in custody away from their whānau. No one in this case is suggesting that [GB] should be placed away from his father. Everyone's focus is on mitigating the risks in doing so.

Plans

[107] Before making either a support order or a custody order, a plan is required even if a prior plan is in force.[52] A plan may be one that has been formulated at an FGC and agreed upon[53] or one prepared by a social worker or other person that the court directs.[54]

[108] The contents of the plans are mandated in the Act.[55] In setting out the contents required for every plan,[56] the Act uses words and expressions such as "specify the objectives", "specify the persons", "contain details of the services and assistance", and "state the responsibilities and personal objectives" of children, parents and people and organisations providing services and assistance. The steps that people must take, and time frames within which things must happen are required. Vague, generalised, minimalistic plans will not comply. Clarity, specifics and who is responsible for doing what and when are essential because the plan is the document that sets out the child's pathway out of their situation of being in need of care and protection.

[109] Plans are kept under review and a date for the review is fixed on its making.[57] In cases involving a child over the age of seven, a review must be no later than 12 months from the date of the making of the order.[58]

[110] The review of the plan involves identifying objectives in the plan that have been achieved, and those that have not. The court is required to consider the report provided for the review and make such directions and orders as appropriate to the

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[52] Section 128(1), (2) and (3).
[53] Section 128(4).
[54] Section 129.
[55] Section 130.
[56] Section 130.
[57] Section 134(1).
[58] Section 134(2)(b).

circumstances. As well as specifying the action required to address any objectives that have not been achieved, the review will determine whether the current orders continue or whether any other order should be made. Plans are therefore a very important feature of the Act's scheme.

The CRC

[111] Another important feature is that the July 2019 amendments to the Act specifically require that the rights of children under the CRC and the CRPD must be respected and upheld.[59] On the face of it, that significantly increased the status of those Conventions under our national law.

[112] The higher courts have said on a number of occasions that the CRC and other UN instruments are useful aids to the interpretation of statutes and that they provide helpful guidance to the interpretation of our domestic law.[60] The Supreme Court recently reiterated that legislation should be read, so far as possible, consistently with New Zealand's international obligations.[61]

[113] However, the requirement that the rights of all children under the CRC and the CRPD must now be respected and upheld, would seem to give the conventions higher status than simply being a helpful guide or an interpretative tool.

[114] The preamble to the CRC refers to States parties, like New Zealand, proclaiming, reaffirming and agreeing that everyone is entitled to all of the rights and freedoms in Human Rights Instruments they have ratified without discrimination of any sort.

[115] Throughout the CRC, the language used in relation to the various rights and protections afforded to all children includes them being things that are "ensured",

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[59] Section 5(b)(i).

[60] For example, in *R v Rawiri,* HC Auckland T014047, 3 July 2002 at [13], Fisher J noted that New Zealand Courts pay regard to internationally accepted human rights principles embodied in international instruments to which New Zealand is a party. See also *Tavita v Minister of Immigration* [1994] 2 NZLR 257 (CA) at 265; and *New Zealand Airline Pilots Association Inc v Attorney-General* [1997] 3 NZLR 269. In *Pouwhare v R* [2010] NZCA 268, (2010) 29 CRNZ 868, the Court of Appeal placed emphasis on the use of the CRC as an interpretive tool.

[61] *TUV v Chief of New Zealand Defence Force* [2022] NZSC 69 at [92].

"guaranteed" and things that "shall" happen. Therefore, when New Zealand ratified the CRC in 1993, it amounted to a guarantee that every single child in the country is entitled to every single right and protection in the CRC. The guarantee is not qualified in any way. It is an unconditional guarantee to every child in New Zealand, including [GB], and our response to his situation must be one that respects and upholds all of the rights and protections guaranteed to him under the CRC.

[116] There are 54 articles in the CRC and the first 41, contained in Part 1, cover all aspects of a child's life and well-being including such things as identity, care, protection, safety, cultural rights, health, education, leisure, freedom of expression, thought and association, the right to be heard, to the preservation of family relationships, to an appropriate standard of living, to protections against various things and more. It also includes the responsibilities of family and extended family and supports and services for parents. In much the same way that the Act requires us to see children holistically, so too does the CRC.

[117] Every so often, the UN issues "General Comments" to help State's parties such as ours to interpret and apply the CRC (and other Conventions) properly. In relation to issues that are relevant in the context of [GB]'s situation, the following is just a small sample of issues covered in the CRC and some of the General Comments available in relation to care and protection related issues:

Indigenous children and their rights[62]

[118] The introduction to this General Comment[63] ("the Indigenous Rights GC") includes the observation that the specific references to children in the CRC are

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[62] Both here, and in some overseas countries, there have been some who question the compatibility of the CRC and the world view of some indigenous peoples. Some here perceive the CRC as having a focus on individual rights that is at odds with Te Ao Māori which sees the place of tamariki as being inseparable from their connection to whānau, hapū and iwi. The debate has even extended to questioning the compatibility of the CRC and te Tiriti. Those concerns and criticisms of the CRC are unfounded. Starting in the preamble, the CRC proclaims that States parties take "due account of the importance of and cultural values of each people for the protection and harmonious development of the child." Various articles specifically address these issues including article 30 which states that,

> "In those States in which ethnic, religious, or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language."

[63] *General Comment No. 11 (2009) Indigenous children and their rights under the Convention*

indicative of the recognition that they require special measures in order to fully enjoy their rights.

[119] The General Comment goes on to proclaim that indigenous children have the inalienable right to be free from discrimination. In the application of the best interests principle, the rights of indigenous children require consideration of how that right relates to collective cultural rights and States authorities are directed to consider the cultural rights of indigenous children and their need to exercise such rights collectively with members of their cultural group.

The rights of the child during adolescence

[120] The introduction to this General Comment ("the Adolescent's Rights GC")[64] mentions that adolescence is a life stage characterised by growing opportunities, capacities, aspirations, energy and creativity, but also significant vulnerability. The Committee observe that the potential of adolescents is widely compromised because States parties do not recognise or invest in the measures needed for them to enjoy their rights.

[121] In order to ensure the optimum development of every child throughout childhood, the General Comment explains that it is necessary to recognise the impact that each period of life has on subsequent stages. Adolescence is a valuable period of childhood in its own right but it is also a critical period of transition and opportunity for improving life chances.

[122] A positive and holistic approach is required rather than the widespread negative characterisation of adolescence leading to narrow problem-focussed interventions, rather than a commitment to building optimum environments to guarantee the rights of adolescents and support the development of their physical, psychological, spiritual, social, emotional, cognitive, cultural and economic capacities. Interventions, supports, activities and opportunities that promote resilience and healthy development are required.

CRC/C/GC/11 (12 February 2009).

[64] *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence* CRC/C/GC/20 (6 December 2016).

The right to rest, leisure, play, recreational activities

[123] This General Comment ("the Rest, Leisure and Play GC")[65] emphasises the importance of play and recreation in the life of every child which is specifically recognised by article 31 of the CRC. Article 31 is concerned with a child's right to engage in play and recreation, cultural life, and the arts. This right must be understood holistically both in terms of its constituent parts and in its relationship with the CRC in its entirety. The Committee explains that as follows:

> Each element of article 31 is mutually linked and reinforcing, and when realised, serves to enrich the lives of children. Together, they describe conditions necessary to protect the unique and evolving nature of childhood. Their realisation is fundamental to the quality of childhood, to children's entitlement to optimum development, to the promotion of resilience and to the realisation of other rights.

[124] The contents of [GB]'s plan, and the order made, must be determined with these and all of his other guaranteed CRC rights and protections in mind.

Section 7AA and te Tiriti o Waitangi

[125] I next consider how the principles of te Tiriti should be applied in [GB]'s case. One of the ways in which the purposes of the Act are to be achieved is by providing a practical commitment to the principles of te Tiriti in the way described in the Act. That way is primarily by duties imposed on the Ministry's Chief Executive under s 7AA specifically in relation to te Tiriti.

[126] Under that section, the Chief Executive is required to ensure that policies and practices that impact on the well-being of children have the objective of reducing disparities for Māori children and have regard to mana tamaiti and the whakapapa of Māori children and the whanaungatanga responsibilities of their whānau, hapū and iwi. The Ministry must seek to develop strategic partnerships with iwi and Māori organisations with a view to their involvement to achieve improved outcomes for Māori children. Expectations and targets are to be set to improve outcomes for Māori

[65] *General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)* CRC/C/GC/17 (17 April 2013).

children. These and other duties are imposed on the Chief Executive in order to recognise and provide a practical committment to the principles of te Tiriti.

[127] Section 7AA is about more than simply identifying [GB]'s whakapapa to [iwi 1] and [iwi 2].[66] It is about more than sending him to a cultural programme for nine weeks[67] and organising Te Reo lessons.[68] Those are good things to include in a plan but are not sufficient on their own.

[128] It is also not sufficient to have someone present at an FGC to provide cultural support[69] but with nothing more afterwards and nothing in [GB]'s plan. Section 7AA is not about simply delegating to [GB]'s parents (who are disconnected from their hapū and iwi), the responsibility of informing [GB] and his siblings of their whakapapa.[70]

[129] Section 7AA requires that the Chief Executive's commitment to the principles of te Tiriti be practical and that it be demonstrated (emphasis added). Commitment requires some sign of dedication, and it must be practical which means it must be real in [GB]'s life and that of his whānau, hapū and iwi. It is not just an abstract notion. To be demonstrated also means there should be some evidence of the commitment and putting the relevant principles of te Tiriti into practice.

[130] In *NZ Police/Oranga Tamariki v [LV]*, I suggested that principles of te Tiriti that will be relevant in the context of proceedings such as this include the following:[71]

Active protection

[131] The principle of active protection flows from the exchange between the Treaty partners whereby the Crown guaranteed to Māori tino rangatiratanga over such things as taonga and kāinga in exchange for Māori ceding to the Crown kāwanatanga.[72]

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[66] There is mention of [iwi 1] and [iwi 2] in the social work report but not in the plan.
[67] Para [69](d) and n 17.
[68] Para [82].
[69] Para[59].
[70] Para [54].
[71] *NZ Police/Oranga Tamariki v [LV]* [2020] NZYC 117 at [82].
[72] I realise there are differing views on this point.

[132] Since *[LV]*, the Waitangi Tribunal has carried out an urgent enquiry into the Ministry and released a report in 2021[73] in which they make the following important comment about the principle of active protection:[74]

> Active protection requires a clear understanding of what the guarantee of tino rangatiratanga over kāinga means, and careful consideration of what would now promote its maintenance and restoration. Active protection means recognising that Māori parents struggling in poverty have an equal right as citizens to meet their children's needs as do the better-off in society. Active protection means recognising that the vast majority of whānau in contact with Oranga Tamariki are not out to harm their tamariki, but they may have ongoing needs that place stress on the whānau. These include factors such as poverty, poor housing, poor mental health, substance abuse, intimate partner violence, or children with high needs. Growing inequality and the disparities in child protection, education, justice, and health that result are not the inevitable outcomes of individual choice. They are substantially the outcomes of legislation, policy, and economic settings about which a society has choices. Active protection requires substantive changes designed to address these structural conditions.
>
> Active protection does not mean intervening forcefully in the lives of whānau only when the cumulative effect of stress meets the threshold for State rescue of a child or children. Active protection certainly does not mean intervening forcefully in the lives of whānau in ways that are arbitrary or inconsistent, or the result of poor practice, or reflect institutional or personal racism.

[133] Those comments are especially relevant in [GB]'s case where issues of poverty, poor housing, poor mental health, substance abuse, intimate partner violence and children with high needs, have been and still are factors throughout all of the Ministry's involvement with the whānau. There are also disparities in child protection, education, justice and health which are not the result of individual choice but come as a result of inter-generational disadvantage which has its origins in colonisation. As the Tribunal point out, active protection requires the Crown (and in this case the Ministry and its Chief Executive) to focus specific attention on these inequities and provide additional resources to address the causes of them.

[134] It is important too, that the demonstration of a practical commitment to this principle is an active one. A passive or reactive attitude on the part of the Chief Executive and his delegates will not do. He is supposed to be pro-active in a case like this to ensure that the rights of his Treaty partners, [iwi 1] and [iwi 2], to tino rangatiratanga over kāinga, is protected and that the issues that [GB] and his whānau

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[73] Waitangi Tribunal *He Pāharakeke, He Rito Whakakīkinga Whāruarua Oranga Tamariki Urgent Inquiry* (Wai 2915, 2021) [Waitangi Tribunal *Oranga Tamariki Inquiry*].
[74] At 2.6.

are struggling with, are properly addressed and adequate resources are applied to do that.

[135] On the issue of making these principles real today in the lives of people like [GB] and his whānau, is the following apt comment by the Tribunal:[75]

> The 'principles' of te Tiriti / the Treaty are the underlying mutual obligations and responsibilities placed on the parties by te Tiriti / the Treaty. They enable te Tiriti / the Treaty to be applied as a living document, including to circumstances not foreseen in 1840.

[136] The Tribunal also set out the relevant starting point for the Māori worldview:[76]

> … [T]he starting point for the Māori worldview is 'he tamaiti, he taonga'; every child is precious, every child is a taonga of their entire whānau, hapū, and iwi – and as such tamariki are the responsibility of all of them.

Partnership

[137] Te Tiriti created a relationship in the nature of a partnership in which the Crown, represented here by the Ministry's Chief Executive, is meant to cooperate with Māori in fields of common interest, such as the well-being of Māori children. There was also a relationship of citizenship in which the Crown assured equal rights and standards to all Māori.

[138] Partnership must mean enabling the active involvement of hapū and iwi in all cases when the Ministry are involved with tamariki and whānau who whakapapa to those hapū and iwi.

Equity

[139] The principle of equity. Article 3 of te Tiriti has commonly been regarded as having the most direct relevance to the provision of social services to Māori and is therefore important here. Because of the disparities between Māori and non-Māori across a range of spheres, including over-representation in state care, this principle is significant, especially given the Chief Executive's duty to address such disparities.

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[75] At 2.2.
[76] At 2.4.

Options

[140] The principle of options compliments the principles of active protection and equity and assures Māori of the right to choose their social and cultural paths. This principal requires, as a minimum, respect for the most important facets of tikanga Māori.

Discussion

[141] Having identified the relevant purposes, principles and other provisions of the Act, and some of [GB]'s rights under the CRC, as well as principles of te Tiriti, I now apply those to [GB]'s situation, starting with a review of the plan that has been prepared for him.

Mana tamaiti, whakapapa, whanaungatanga

[142] Much more is required to properly recognise these concepts. The only place in [GB]'s plan where the words "hapū" and "iwi" appear is in the heading shown at para [68] above. The names of the hapū and iwi to which [GB] has a whakapapa connection are not even in the plan. The words and therefore the concepts of "mana tamaiti", "whakapapa", "whanaungatanga" and "tikanga" are completely absent despite the very heavy emphasis placed on those key concepts in the purposes,[77] general principles[78] care and protection principles[79], under the CRC[80] and in te Tiriti.[81] They are essential to [GB]'s well-being and best interests[82] but are completely absent from his plan. There is no evidence at all of any demonstration by the Chief Executive of a practical commitment to any of the principles of te Tiriti I have mentioned.

[77] See [84](e), (f), (g) above.
[78] See [92](b)(iii), (c), (d), and [93] above.
[79] See [94](c) above.
[80] See [118] – [119] above.
[81] See [125] – [138] above.
[82] See [86] – [91] above.

Although that is astonishing, it is common practice in the majority of cases involving Māori children that I see each year in the Family Court and Youth Court.[83]

[143] When I ask about the absence of this crucial cultural content in reports, plans and FGC outcomes, the answer is almost always the same as that mentioned in [GB]'s case; that he did not show much interest in learning about his whakapapa and was not aware of his pepeha.[84]

[144] This is an example of the Chief Executive's disregard for the principle of active protection. It should not be for [GB], or his whānau, to be asking for these connections to be made and for the involvement of hapū and iwi to be established. The Chief Executive, through his social workers and others in the Ministry, has the responsibility to actively do that.

[145] We cannot expect that children who have become disconnected from their culture as a consequence of colonisation and everything that has happened (and not happened) since then, will ask for help to reconnect them to those with whom they belong but about whom they have little or no knowledge. That state of alienation is all the more reason to enable a process whereby the connections are established, maintained and strengthened.

[146] Whilst I agree that the seeming lack of interest to engage in the cultural aspects of a plan is a challenge, the correct response is not to give in to that or leave it out altogether. Instead, creative ways must be found to overcome it. It is, however, interesting to note that Mr Mendes, and those who worked with [GB] on the Ranga Tū programme, had a very positive impression of his interest and pride in his culture which, it seems, the social worker was unable to identify. It likely has a lot to do with how the issue is approached.

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[83] It is almost three years since I pointed out in *NZ Police/Oranga Tamariki v* [*LV*] above n 71 (at para [130]) that the template used for social work plans is the same as the one used before the July 2019 changes to the Act. Although I know work was started to address that it seems to have stalled. I do see cases where the template is adapted and compliant plans are provided, but that seems to be down to the initiative of individual social workers in some site offices. It is also the exception not the rule. For the most part, the old unfit-for-purpose template is still used as it has been in this case.

[84] See [73] above.

[147] The current plan for [GB] has no cultural content at all because he has finished the Ranga Tū programme. The absence of that content is hard to understand, especially given the discussions that have taken place in court about these issues[85] and the references that have been made to steps that were being taken to address such matters.[86]

Health, resilience, recreation and employment

[148] The plan must include more to address the impact of harm on [GB] and support him on a positive path forward. The current plan has no health content apart from AOD and anger management counselling despite all of his serious and complex health needs. He has had a lifetime of neglect and psychological abuse. The impacts of that are plain to see and ongoing, including concerns about his psychological functioning, trauma and possible PTSD.[87] He might have a neuro-disability[88] and a proper assessment of that may well have long term benefits to ensure [GB] receives the support he needs.

[149] The purposes of the Act specifically require us to advance long term health (and other) issues for [GB] and respond to the harm he has suffered.[89] The general principles require that the impact of this harm on him, and the steps to enable his recovery are addressed. He should also be seen holistically and his health needs, amongst other things, addressed.[90] As well as that, [GB]'s rights under the CRC require that his physical, psychological, spiritual, emotional and cognitive needs be met.[91] The Chief Executive has a duty in accordance with te Tiriti principle of active protection to do something about this too.[92]

[150] Again, it is astonishing that there is no mention of such issues in the plan and the social work report, and that an older report simply says it is unclear when a health

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[85] See [57] and [58] above.
[86] See [59] above.
[87] See [56] above.
[88] See [8] – [10] above.
[89] See [84](a) and (b) above.
[90] See [92](b)(ii) and (v).
[91] See [122] above.
[92] See [128] – [135] above.

assessment will be rescheduled for [GB].[93] There may be things identified in the Gateway Assessment completed in August 2020[94] that might still be relevant and in need of attention. Advice from someone suitably qualified, such as Dr Julia Ioane, should be obtained in relation to how best to approach the issue of [GB]'s trauma. Some care and thought must be given to what other assessments are needed to inform this aspect of the plan, without overwhelming [GB].

[151] The plan contains a heading "Why are we involved and what are we worried about?" which lists the problems with Mr [RB]'s parenting and concerns about [GB] leaving the home without communicating, being out of education and offending. It then includes the things set out at paragraph [69] above, including AOD and anger management counselling as the only therapeutic content.

[152] These features of the plan bear out the concern raised in the Adolescent's Rights GC, about the widespread negative characterisation of adolescence leading to narrow-focused interventions.[95] Both the Adolescent's Rights GC, and the Rest Leisure and Play GC place emphasis on interventions, supports and activities that promote resilience and healthy development. [GB]'s rights under the CRC require that we demonstrate a commitment to building optimum environments for him rather than narrow, largely problem-focussed interventions.

[153] [GB] is much more than a boy with AOD and anger problems. He likes [two types of sports] and has a natural talent for sports. He likes rapping and freestyling.[96] He showed pride when visiting his mother's Marae[97] and a nearby placement in [location A] is the only one he has not run away from.[98] These are just some of [GB]'s strengths that must be built on, including finding things he enjoys that will provide positive ways for him to get an adrenaline rush.[99] Four hours of mentoring a week, possibly capped at 16 hours[100] will not do.

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[93] See [71] above.
[94] See [53] above.
[95] See [122] above.
[96] See [4] above.
[97] See [2] above.
[98] See [48] above.
[99] See [46] above.
[100] See [57] above.

[154] As well as that, the plan's focus on problem related interventions, fails to see [GB] holistically, does not affirm his mana or promote his best interests. It also does not treat him with dignity and respect.[101]

[155] Another important issue for [GB] next year, that the plan should address, is that he will turn 16 on [date deleted] 2023 and so a referral to a Transition to Adulthood ("TTA") social worker should form part of his plan. The purposes of the Act specifically include assisting with the transition to independence.[102] This should be done in conjunction with obtaining the early leaving exemption for [GB] and getting him started legally on the TROW programme.

[156] [GB] must be actively involved now in the discussions about these options so that the creation of the plan has his direct involvement.[103] In 2023, he needs a clear well-supported pathway that he is happy with. Features of it must include reconnecting him with his culture and finding ways to address his trauma, so he does not have to depend on drugs to self-medicate for those issues. He must be guided towards employment and independence. Building resilience and confidence should be included as a means of helping him manage the unsatisfactory situation at home. To only include respite care as the means of doing that is another example of the negative focus of the plan. Simply taking him out of the home from time to time does nothing to fix the problems when he is there.

Support for Mr [RB]

[157] The only thing in the plan to support or upskill [GB]'s father is mention of getting help from the local Marae which apparently has not started yet. Much more than that is needed. Mr [RB] had never parented a child until [GB] moved in with him in 2020. His behaviour throughout the Ministry's involvement from the time [GB] and his sisters were born, was such that he was only ever permitted to have supervised contact. And yet he is now the primary "care-giver" of [GB], [OR] and occasionally [BR] but with no support. Again, the Act's purposes require that more be done to

[101] See [84](a) and [92](b)(i) above.
[102] See [84](h) above.
[103] See ss 5(1)(a) and 11(2)(d) of the Act and [92](a) above.

ensure Mr [RB] he gets the help he needs,[104] as do the general principles,[105] the care and protection principles[106] the CRC rights[107] and te Tiriti.[108]

[158] I have grave concerns about the girls also living in the home now with their father. He has no parenting experience, is not coping, continues to abuse alcohol, currently has no supports in place and there are regular family harm incidents involving the Police. Against the history of the Ministry's involvement with this whānau which I summarised above,[109] that is extraordinary.

Cost

[159] A compliant plan will necessarily look very different to the plans we have been used to in the past, such as the one prepared for [GB]. A compliant plan will require the allocation of substantially greater resources than plans in the past and Parliament will have known that when it made the amendments to the Act. Also, in complying with his duties under s 7AA, the Chief Executive must provide the resources required as the Waitangi Tribunal pointed out.[110] The CRC also requires that States parties consider public budgeting for the realisation of rights and there is a specific General Comment that addresses these obligations.[111]

[160] It is important to recognise that the expense involved in funding a compliant plan is an investment rather than a cost. The current non-compliant plan, which would not produce any positive change, would come at a cost too which would likely be greater in the long run.

Practice

[161] Some of the ways in which perceptions and practice are not in accordance with the scheme of the Act is illustrated by [GB]'s case. When the Ministry first applied to

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[104] See [84](c)(d)(g) above.
[105] See [92](c)(d)(e) above.
[106] See [94](a) to (f) above.
[107] See article 27 of the CRC for example.
[108] See [132] to [140] above.
[109] See [18] to [45] and [52] to [59] above.
[110] See [134] above.
[111] *General comment No. 19 (2016) on public budgeting for the realization of children's rights (art. 4)* CRC/C/GC/19 (20 July 2016).

the Family Court, the initial order made was a custody order, even though the goal was to continue to support the children being in their mother's care and they did stay in her care.[112]

[162] The custody order lasted for three years. After that there was a support order that was replaced once and then extended repeatedly to last for four more years with a minimalistic plan that consisted of monitoring, arranging supervised access and a visit by the social worker every two months.[113]

[163] That approach, which has been common practice for more than 30 years, is contrary to the scheme of the Act described above.[114] Instead of following the scheme of the Act, the tendency has been to start out with the most interventionist option available, a custody order, and then phase out to a support order which is then extended well past its statutory life. It has been treated more as a monitoring order of inadequate plans rather than as a support order which comes with the special features listed above.[115] It should have a comprehensive, robust plan capable of addressing within 12 months the care and protection concerns.

[164] In the current proceeding, everyone agrees that [GB] should continue to live with his father with supports in place, but the police and Mr Kannemeyer seek a custody order. If I was to approve the current inadequate plan and make that custody order, it would make no positive difference in [GB]'s life. It would simply repeat most of what has been tried before and found not to work. It also fails to honour the purposes and principles of the Act, fails to respect and uphold [GB]'s rights under the CRC, and demonstrates no commitment at all to the principles of te Tiriti.

[165] The importance of the plan in the statutory scheme seems to be misunderstood or underestimated with the focus instead being on obtaining what is perceived to be the "strongest" order. It is a major concern that the plan presented in this case is not

[112] See [31] – [37] above.
[113] See [36] – [38] above.
[114] See [96] – [110] above.
[115] See [101] – [104] above.

only considered adequate but is described as "comprehensive" and with "no shortcomings".[116]

[166] A compliant plan must serve as a clear map of [GB]'s pathway out of the care and protection trap he is in. 2023 must be a much better year for [GB] than the last two years in particular have been. Given the tremendous delays due partly to COVID 19, time is now of the essence.

A compliant plan

[167] Creating a compliant plan for [GB] requires applying all of the features of the Act, the CRC and te Tiriti I have mentioned, and crafting something that is appropriate to his circumstances at this time, in a way that will ensure that his well-being and that of his whānau, hapū and iwi is promoted. Her Honour Judge Otene has eloquently described the process as follows:[117]

> [In] stating various principles which ought to be taken into account, the Act is identifying constituent elements of child well-being. Well-being is a function of the balancing of those principles reasoned by the decision maker to the subjective circumstances of the child and the child's kinship group. Inevitably the advancement of some principles will diminish the realisation of others and the balance will require adjustment through time and changing circumstances, but it is by that process of accounting and weighting that an outcome most in the child's wellbeing and best interest is constructed.

[168] The Act enables me to indicate the matters I think need to be dealt with in the current plan and what I require to be included in the new plan.[118] All of the following features must be included in the new plan, but the Ministry may retain any necessary existing features and may add more. When preparing the plan, the features I referred to in paragraphs [107] and [108] must be applied.

[169] The new plan must address [GB]'s mana, his whakapapa, and the practice of whanaungatanga in a way that is real and meaningful for him. The plan should provide for [GB] (and ideally his parents and siblings too) to visit the Marae of both his mother and father. This is to be done in a way that enables connections to be made with

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[116] See [80] above.
[117] *Chief Executive of Oranga Tamariki v BH* [2021] NZFC 210; (2021) 32 FRNZ 810 at [33].
[118] Section 129(2).

whānau, hapū and iwi on those visits with a plan as to how those connections can then be maintained and strengthened afterwards. In making arrangements for these trips, the Ministry must also involve the Lay Advocate for [GB] and his whānau, hapū and iwi, Ope Maxwell. I urge the Ministry to also consult with Patrick Mendes who already knows [GB] and has successfully organised similar journeys for other taitamariki before. This aspect of the plan is to be prioritised with a view to it happening in the first quarter of 2023.

[170] The plan must address [GB]'s various health needs having regard to the issues I have referred to above.[119]

[171] Given the plan to now transition [GB] to the TROW programme when he turns 16 next year, then an early-leaving exemption must be obtained as soon as possible.

[172] The plan must include preparatory work for [GB]'s transition to adulthood including the allocation of a social worker.

[173] The plan must include activities of [GB]'s choice that will build on his sporting, creative and cultural interests and involve positive, supportive role models where possible, with a view to building his confidence and resilience.[120]

[174] There need to be robust provisions in relation to supporting and upskilling Mr [RB] in his role as primary caregiver.[121]

Result

[175] The proceedings are adjourned to the crossover list on 16 January 2023 at 11.45 am.

[176] An updated social work report and plan that accords with the above is to be filed and served far enough in advance of that hearing to enable disposition to occur that day.

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[119] See [148] to [150] above.
[120] See [152] and [153] above.
[121] See [157] above.

[177] The order that will be made to support the plan will be a s 91 support order.

[178] For now, the existing s 78 interim custody order continues.

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Judge AJ Fitzgerald
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 07/12/2022